

RESOLUTION OF THE

NAABIK'ÍYÁTI' STANDING COMMITTEE OF THE
23rd NAVAJO NATION COUNCIL -- Fourth Year, 2018

AN ACTION

RELATING TO NAABIK'ÍYÁTI' COMMITTEE; RECOMMENDING THE STATE OF NEW MEXICO MANDATE ALL SMALL LOAN BUSINESSES DISCLOSE AND EXPLAIN TO ALL NATIVE AMERICAN BORROWERS, IN THEIR NATIVE LANGUAGE, THE TERMS, DETAILS AND CONDITIONS OF ALL SMALL LOAN AGREEMENTS, INCLUDING TAX REFUND ANTICIPATION LOANS AND SHORT TERM INSTALLMENT LOANS

WHEREAS:

1. Within the state of New Mexico, there are currently 622 small loan companies licensed to do business. Small loan companies are businesses or persons engaged in making loans to borrowers in the amount of five-thousand dollars (\$5,000.00) or less. www.rld.state.nm.us/financialinstitutions/Small_Loan_Companies. These companies typically offer a variety of different loan products that may include short term installment loans, refund (tax) anticipation loans, and/or small dollar business (commercial) loans. *Id.*
2. The Financial Institution Division of the New Mexico Regulation and Licensing Department is holding hearings on certain proposed rule changes concerning loan companies. Included in these hearings are brochure and signage requirements for small loan companies. See attached proposed rules, marked as Exhibit C.
3. Members of the Navajo Nation seek and obtain loans from lenders of small loans. Many Navajos who do not speak or understand English, or have limited understanding of English, are particularly vulnerable to unfavorable terms and conditions in these loan agreements. Terms and conditions should be provided to the borrower in his or her preferred language. If Navajo is the preferred language, lenders should be required to explain each and every term of the loan agreement in Navajo. In any contractual agreement, the general rule both parties understand the terms and conditions. Otherwise, the agreement is generally unenforceable.
4. Under New Mexico law, the State-Tribal Collaboration Act requires the state and its agencies to collaborate and communicate with all Indian tribes in New Mexico. 2011 New

Mexico Statutes, Chapter 11: Intergovernmental Agreements and Authorities Article 18: State-Tribal Collaboration Act, 11-18-1 through 11-18-5.

5. The Navajo Nation Human Rights Commission was created by the Navajo Nation to address instances of discrimination against members of the Navajo Nation. Consistent with its duties and responsibilities, it enacted resolution entitled "*Recommending Indigenous Language be part of Proposed Rule Change on New Mexico's Small Loans by the New Mexico Financial Institutions Division of the New Mexico Regulations and Licensing Department.*" NNHRCAPRIL-13-18, attached as Exhibit A. The New Mexico Center on Law and Poverty is seeking the same recommendation, among other comments. See April 2, 2018, written comments of the Center, marked as Exhibit B.

NOW, THEREFORE, BE IT RESOLVED THAT:

The Navajo Nation endorses and supports written comments and recommendations of the Navajo Nation Human Rights Commission in respect to small loan agreements in the state of New Mexico. All loan documents should be explained in the preferred language of the borrower. If the borrower is Native American, small loan companies must be required to explain thoroughly the terms and conditions of the loan agreement in the native language.

CERTIFICATION

I, hereby, certify that the foregoing resolution was duly considered by the Naabik'íyáti' Committee of the 23rd Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 11 in Favor, and 00 Opposed, on this 28th day of June 2018.



LoRenzo C. Bates, Chairperson
Naabik'íyáti' Committee

July 7, 2018

Date

Motioned : Honorable Dwight Witherspoon
Second : Honorable Leonard Tsosie

Chairperson LoRenzo C. Bates not voting

**RESOLUTION OF THE
NAVAJO NATION HUMAN RIGHTS COMMISSION**



Recommending Indigenous Language be part of the Proposed Rule Change on New Mexico's Small Loans by the New Mexico Financial Institutions Division of the New Mexico Regulation and Licensing Department

WHEREAS:

1. Pursuant to 2 N.N.C. §920 and §921, the Navajo Nation Human Rights Commission ("Commission") is established within the Legislative Branch as an entity of the Navajo Nation government to operate as a clearinghouse to address discriminatory actions against citizens of the Navajo Nation; and to interface with local, state, federal governments and with national and international human rights organizations in accordance with the Commission's plan of operation and applicable laws and regulations of the Navajo Nation; and
2. The Office of Navajo Nation Human Rights Commission ("Office") conducted several consumer rights seminars on April 17, 2015, January 28, 2016, March 23, 2016, April 28, 2016, and September 23, 2016. In addition, a free legal advice session on consumer issues was held on March 29, 2017. These consumer right sessions had representatives from the Federal Trade Commission, Consumer Financial Protection Bureau, New Mexico Attorney General's Office, and Arizona Attorney General's Office present on laws and policies that protect consumers from abuse and fraud; and
3. The purpose of the consumer right seminars and free legal advice session was to provide information to the Navajo people on the importance of maintaining their credit and making payments on time, their rights under state and federal law when it comes to loans and line of credit, how to protect themselves from fraud and scams, etc.; and
4. On March 21-22, 2018, the Office, in partnership with the New Mexico Center on Law and Poverty, New Mexico Legal Aid, Treinen Law Office and Law Office of Feferman, Warren and Mattison, held two consumer right seminars on small loans in Farmington and Gallup, New Mexico. Each seminar was held from 1:00 p.m. to 7:00 p.m. The first part of the consumer seminars focused on small loans, pawn loans, holiday and anticipated tax refund loans, the 2017 House Bill 347 (which capped the small loans annual percentage rate and reporting requirements to the credit bureaus), and understanding credit history, credit scores and credit reporting. The second part of the seminar was a one-on-one session with an attorney for free legal advice. Attendees were encouraged to bring their small loan contract for the one-on-one consultation session with an attorney; and
5. On April 3, 2018, the New Mexico Financial Institutions Division ("FID") of the New Mexico Regulation and Licensing Department conducted a public hearing in Santa Fe, New Mexico at the Toney Anaya Building on proposed rule changes pursuant to §58-15-11 NMSA 1978 concerning Title 12 - TRADE, COMMERCE AND BANKING, CHAPTER 18 - LOAN COMPANIES.. The Office participated in the public hearing and presented

two issues: 1) the communication efforts between the small loan industry and Navajo consumers is ineffective and 2) the FID must provide meaningful and effective public education on the Navajo Nation. The Office also supported the issues and points raised by the New Mexico Center for Law and Poverty (see attachments); and

6. The purpose of the rule changes is to adopt requirements and correct inconsistencies to incorporate the provisions of 2017 House Bill 347 which amended provisions of the New Mexico Small Loan Act of 1955, the New Mexico Bank Installment Loan Act of 1959, and the Money, Interest, and Usury statute, concerning certain types of loans in the state of New Mexico. The statutory changes made by 2017 House Bill 347 necessitate the amendment of existing rules concerning, but not limited to, signage and brochures required at licensed small loan company facilities, the repeal of rules related to certain loan products that are no longer permitted under statute, and the adoption of new rule provisions for administrative hearings under the Small Loan Act of 1955; and
7. In addition, the 2017 House Bill 347 made it illegal for New Mexico storefronts and online loans business to charge an annual percentage rate ("APR") greater than 175% on a \$5,000 loan or less. Small loan businesses are required to give you at least one hundred twenty days (120) days to repay your loan, unless it's a tax refund anticipation loan. Your small loan must be repaid in at least four equal payments, unless it's a tax refund anticipation loan. Your small loan must be reported to the credit bureau, which gives you the right to rebuild your credit with every on-time payment you make on the small loan; and
8. Since 2013, the Office has received over 16 complaints on payday loans, title loans, and short-term loans in New Mexico. The Office found that small loan businesses targeted Navajos in the border towns of Gallup, Grants and Farmington, New Mexico and offer an average annual interest rates and fees of 350% APR before New Mexico's 2017 House Bill 347 was enacted. These small loans target single mothers, veterans, elders and Navajos who are the most vulnerable and at risk. In addition, these small loans often are not thoroughly explained to Navajos in the Navajo language. The terms and conditions of these small loans entail detail information that explain the penalties, procedures to resolve disputes and collection, late fees and deferred payment terms; and
9. The State of New Mexico has a responsibility to collaborate and communicate with "federally recognized Indian tribe, nation or pueblo" under the State-Tribal Collaboration Act. In accordance with the New Mexico statute, 11-18-1 through 11-18-5, every state agency, including the FID, are required to, but not limited to, "promotes effective communication and collaboration between the state agency and Indian nations, tribes or pueblos," "promotes positive government-to-government relations between the state and Indian nations, tribes or pueblos," "promotes cultural competency in providing effective services to American Indians or Alaska Natives," and "make a reasonable effort to collaborate with Indian nations, tribes or pueblos in the development and implementation of policies, agreements and programs of the state agency that directly affect American Indians and Alaska Natives."

NOW THEREFORE BE IT RESOLVED:

1. The Navajo Nation Human Rights Commission hereby directs the Office of Navajo Nation Human Rights Commission to present this resolution at the next New Mexico Financial Institutions Division of the New Mexico Regulation and Licensing Department public hearing for May 15, 2018 at 11:30 a.m. in Gallup, New Mexico. It is important the FID strengthen the communication efforts between the small loan industry and Navajo consumers to make it effective and that the FID must provide meaningful and effective public education on the Navajo Nation as part of the State-Tribal Collaboration Act.
2. The Navajo Nation Human Rights Commission further hereby directs the Office of Navajo Nation Human Rights Commission to distribute this resolution to the New Mexico Financial Institutions Division of the New Mexico Regulation and Licensing Department, Office of the President and Vice-President of the Navajo Nation, 23rd Navajo Nation Council, All Pueblo Council of Governors, and New Mexico Center on Law and Poverty on the importance of having indigenous language be part of the Proposed Rule Change on New Mexico's small loans by the New Mexico Financial Institutions Division of the New Mexico Regulation and Licensing Department.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Human Rights Commission as a duly called meeting at St. Michaels, Navajo Nation (Arizona), at which a quorum was present and same was considered by a vote of 2 in favor and 0 opposed, this 6th day of April 2018.



Jennifer Denetdale, Ph.D, *Chairperson*
Navajo Nation Human Rights Commission



924 Park Ave SW, Ste C
Albuquerque, NM 87102
505.255.2840
nmpovertylaw.org



April 2, 2018

Kevin A. Graham
Senior Enforcement Counsel
Regulation and Licensing Department
PO Box 25101
Santa Fe, New Mexico 87504

RE: Proposed Rule Changes for Title 12, Chapter 18 NMAC

Dear Mr. Graham,

Please find our comments to the proposed rule changes to NMAC Title 12, Chapter 18. Attached to this letter are our recommended revisions to the proposed rule changes.

I. 12.18.3 Mandatory Brochure for Small Loan Businesses

We recommend including the following additional language in the proposed NMAC 12.18.3.8 (D): Mandatory Brochures for Small Loan Businesses.

Subsection (D)(5) "Finance Charge" should be amended to include the definition of finance charge according to 12 CFR Part 1026.4(b)¹ and should state what costs a borrower may see included in the finance charge on small loans made pursuant to New Mexico law. According to the New Mexico Bank Installment Loan Act², the total finance charge "consists solely of interest and a fully earned processing fee not to exceed the lesser of two hundred dollars (\$200) or ten percent of the principal." This disclosure should be made clear in the brochure, as well as on all marketing and business websites, and in-store on all schedules of charges.

We recommend including language in Subsection (D)(13) "Credit Report" to indicate borrowers' right to build their credit history with each small loan they take out in 2018, as required by both the New Mexico Small Loan Act and the New Mexico Bank Installment Loan Act, NMSA 58-15-10.2 and 58-7-10.

Additionally, we recommend including two new terms in an additional subsection (D)(14) and (D)(15): "Fees" and "Repayment." The new law strictly regulates the fees that a lender can charge a borrower entering into a loan contract, but a borrower unfamiliar with the technical

¹ N.M. STAT. ANN. 58-15-17(J) (2017).

² N.M. STAT. ANN. 58-7-6 (2017).

aspects of the law would not know the limits on the fees they can be charged. The FID should include a succinct summary of all fees in the mandatory brochure to help bridge this knowledge gap. We recommend including a definition of "repayment" to address another key provision in the law: the mandatory 120 day repayment period and minimum 4 installment payments requirement for all loans except tax refund anticipation loans.

Lastly, we recommend the Financial Institutions Division expand the list of entities that borrowers have the right to contact in the event they have a concern with a particular lender by including in the mandatory brochure the contact information for the New Mexico Attorney General's Office and federal Consumer Financial Protection Bureau. Adding this contact information ensures that concerns with a particular loan are directed to the appropriate government agency and gives borrowers access to important information about these government agencies that would otherwise be very difficult to find.

Please see the attachment for the language we recommend the Division adopt for the NMAC 12.18.3 "Mandatory Brochure for Small Loan Businesses."

II. 12.18.4 Mandatory Signage for All Small Loan Companies

We share the Division's concerns in amending the schedule of charges requirements to help borrowers understand the true costs of outstanding loans. Amending NMAC 12.18.4 to promote uniformity in disclosures among all licensees in New Mexico is important to ensure transparency in the costs of small loans. In order to have meaningful disclosures, a borrower should be able to walk into a small loan store and see how much a loan will actually cost. The recommendations below and expanded in greater detail in the attached document offer methods to further ensure clear and effective disclosures.

As currently written, NMAC 12.18.4.8 Subsection (E) states that the schedule of charges shall consist of two distinctive sections, and then describes five required headings. It is not clear from the subsection (E) how those headings should be divided into two distinctive sections. In the current version of NMAC 12.18.4.8, the schedule of charges required by Subsection (E) mirrors the Truth in Lending Act (TILA) disclosures, which are mandated by federal law in order to ensure uniformity in financial disclosures. The proposed subsection (E) diverges from the TILA disclosures and intended uniformity by replacing the "FINANCE CHARGE" heading with a heading entitled "FEE: a list of all additional fees that you may be charged." While we share the concern indicated by this change that the schedule of charges should clearly convey to borrowers any additional fees they may incur when entering into a loan contract, doing so should not supplement disclosure of the finance charge consistent with the TILA.

Instead, we recommend that a separate section be included in the schedule of charges stating all fees permitted under New Mexico lending law that the licensee could potentially charge the borrower.

a. Uniformity of Disclosures

These proposed regulations address disclosures made to borrowers slightly differently depending on the form of the disclosure – be it a brochure, a schedule of charges, a website, etc. Our comments on these regulations emphasize the need for uniformity in all venues where borrowers have access to information. We recommend, as addressed below, that the disclosures made to borrowers in stores mirror the disclosures made to borrowers on lending and marketing websites. Similarly, we

recommend, in our comments on the proposed NMAC 12.18.4, that the schedule of charges mirror what borrowers find on their loan documents.

We encourage the FID to require licensees to disclose to borrowers, in clear, straightforward terms, the true costs of their loan and the benefit of their bargain. The more opportunity to confuse a borrower – be it through the addition of arbitrary fees, the delivery of contract terms in a language in which the borrower cannot communicate, or signage obscuring actual costs of a loan – the greater the opportunity for exploitation. The market operates more effectively when all members of the public can understand the terms of the contracts into which they are entering.

III. 12.18.5 and 12.18.6 Annual Data Report for Payday Loan Lenders and Annual Data Report for Title Loan Companies

In the 2004 regulations, the FID authorized annual data reporting for both payday loan and title loan products, beyond the minimum requirements mandated by the Small Loan Act. These data reporting requirements, promulgated in NMAC 12.18.5 and 12.18.6, respectively, are repealed by the FID's proposed regulations. While payday loan reporting is no longer applicable under the new law, there has been no explanation offered for why title loan reporting is repealed.

In 2004, the FID saw it necessary in regulation to require lenders to report data on loans above and beyond the statutory minimum. We caution the FID to avoid reducing the reporting requirements for lenders simply because the law has changed. To the contrary, we emphasize the importance of thorough reporting requirements, particularly around the fees lenders are charging; all loans refinanced, renewed, or extended in 2018 and beyond; and refund anticipation loan transactions. These are all data impacted by the changes enacted in New Mexico lending law in 2017. Without a clear and accurate picture of loan transactions in this state, it will significantly decrease financial transparency in New Mexico and make it difficult to effectively regulate licensed lenders.

We therefore urge the FID not to delete NMAC 12.18.6, but to amend it to require annual data reporting for specific loans products sold, including but not limited to refund anticipation and holiday loans, and renewed or refinanced loans, as well as require annual data reporting for fees charged to borrowers segregated by type.

IV. 12.18.7 Hearing Procedures for Small Loan Companies

While the majority of the current NMAC 12.18.7 "Terms and Conditions For Payday Loan Agreements" pertains to the terms of payday loan agreements, the procedures for hearings by the Division pursuant to the New Mexico Small Loan Act of 1955 remain relevant in the wake of the changes to the Small Loan Act that went into effect in 2018.

Regulations pertaining to debit authorizations remain relevant even though short term loans with repayment periods less than 120 days are no longer permissible under either the Small Loan Act or the New Mexico Bank Installment Loan Act of 1959. We recommend inserting language from the current NMAC 12.18.7.8 and 12.18.7.12 that provides important protections for borrowers who choose to provide a wage assignment or draft or debit authorization into the final version of NMAC 12.18.7. As long as wage assignments and draft or debit authorizations are still permissible under this new law, those

regulations specific to them (NMAC 12.18.7.8 and 12.18.7.12) should remain in effect and should not be repealed.

The proposed NMAC 12.18.7 “Hearing Procedures” should be renamed “Terms and Conditions of Small Loan Agreements” and should include the definitions and regulations around debit authorizations contained in the current regulations and still relevant under the new law. Additionally, it is crucial that this first round of regulations address two key issues: defining what a loan modification is and defining what it means to rollover, renew, and refinance a loan under the Small Loan Act and Bank Installment Loan Act. The FID is granted the express authority to issue regulations that specifically address the issue of renewal and refinance in the Small Loan Act and should take this opportunity to do so in this round of regulations.³

a. Holiday Loans

In both disclosures to borrowers and in guidelines to lenders, the FID should define “Holiday Loan.” A product popularly offered by lenders in the northwestern region of New Mexico, the FID’s position has been to include a holiday loans in the definition of “Other Loans,” rather than in the definition of “Refund Anticipation Loan.” Therefore, holiday loans should be subject to the same 120 day repayment period and minimum of 4 repayments as all other non-RAL loan products under the new law. To eliminate the confusion between a holiday loan and an actual refund anticipation loan, it is necessary to clarify the distinction between the two products and the definition of “holiday loan” in regulation.

b. Defining What It Means to Make a Loan

We recommend that NMAC 12.18.7 specifically address what it means to make a new loan. If an existing loan is renewed, refinanced, or rolled over into a new loan with the same lender under pre-2018 terms, that loan is in potential violation of the Small Loan Act or Bank Installment Loan Act. Both the new lending law and the proposed regulations are silent on this particular issue, and it is important that the FID provide in regulation an explanation as to how the agency will respond to loans renewed or otherwise modified after this law went into effect.

We are concerned that without immediate clarification in regulation, outstanding loans made prior to 2018 will continue to be rolled over without regard for, among other things, the interest rate and repayment period mandated by the new law. Unlimited renewals and the extension of multiple renewals without principal reduction are inconsistent with sound lending practices and consumer protections. In New Mexico, licensees frequently market and encourage borrowers to “renew,” “refinance,” or “rollover” their existing loans. The repeated renewal of loans dramatically increases the loan’s costs while making it significantly difficult for a borrower to compare loan costs and understand the long term financial consequences of the extension.⁴ Both the federal Consumer Financial Protection Bureau (CFPB) and the Office of the Comptroller of the Currency (OCC) have expressed concern with the common practice of repeatedly rolling over small, short term loans.⁵ There is thus an urgent need to define in regulation what constitutes a “loan modification” and what constitutes a “new loan” in order to close this potentially glaring loophole.

³ N.M. STAT. ANN. 58-15-11(2017).

⁴ 12 CFR Part 1041.

⁵ *Id.*; Office of the Comptroller of the Currency, OCC Advisory Letter on Payday Lending AL 2000-10 (Nov. 27, 2000) <https://www.occ.treas.gov/news-issuances/advisory-letters/2000/advisory-letter-2000-10.pdf>.

Consistent with the interpretation of the federal CFPB, if a loan is rolled over, the terms of the loan agreement are modified, any fees are added, or the finance charge is in any way altered, those changes constitute a new loan.⁶ We suggest that the FID define the following terms in regulation: "renewal," "loan modification," "rollover," "loan extension," and "refinance", and request that the FID make clear in these regulations that all of these result in a new loan subject to the new law.

Please see attachment regarding our recommendations for this Part.

V. 12.18.8 Licensing of Non-Resident Lenders

We recommend only minor revisions to this section to ensure that NMAC 12.18.8 is inclusive of all regulated loan transactions made by non-resident lenders. Please see attachment for our recommendations.

VI. 12.18.9 Refund Anticipation Loans

We commend the Division for including tax refund anticipation loans (RALs) in the first round of regulation, as there is an urgent need for further clarity around this newly regulated product. In particular, we commend the Division for including restrictions on the collateral permissible for securing a refund anticipation loan.

With regard to NMAC 12.18.9.7(A), we recommend the Division include the following requirements for the mandatory disclosures for borrowers of refund anticipation loans in order to promote uniformity in disclosures across licensees and to ensure that these disclosures fulfill their intended purpose: ensuring that borrowers understand the terms of the agreements into which they are entering.

First, in NMAC 12.18.9.7(A)(1), we recommend inserting the definition of refund anticipation loan included in Section 15-15-2 of the New Mexico Small Loan Act, so that the disclosures are clear with regard to what the refund anticipation loan product entails.

In our attached revisions to NMAC 12.18.9.8(6), we emphasize the necessity of clarifying the timeline for which licensees engaged in issuing RALs should estimate APR. While the proposed regulations prohibit the recalculation of the APR upon repayment of the loan, both the proposed regulations and New Mexico lending law are silent as to the timeline by which APR for this product *should* be calculated. The 2018 Internal Revenue Service (IRS) official position on the timeline taxpayers can expect to receive their return is: "The IRS issues most refunds in less than 21 days."⁷

We recommend the addition of the following language to NMAC 12.18.9.10: "All licensees must make disclosures and estimate APR for tax refund anticipation loans according to the best information reasonably available to the licensee at the time the loan is made. All disclosures and estimates must be calculated according to the soonest possible date that the best information reasonably available indicates a tax return may be received. The best information reasonably available shall be the official statement offered by the Internal Revenue Service. All borrowers must be notified of the date by which the

⁶ 12 CFR Part 1041.

⁷ Internal Revenue Service, Refunds (March 22, 2018) <https://www.irs.gov/refunds>.

estimates and disclosures are calculated." This requirement is consistent with the Truth in Lending Act's requirements for the use of estimates in disclosures.⁸

Furthermore, we're concerned with the potential issue wherein a licensee issues a loan with a finance charge calculated based on the estimate that a refund will be received within 21 days, but the refund is, in fact, received by the licensee in a shorter period of time. In this scenario, which is very likely to occur given the IRS's conservative refund estimates, the finance charge originally deducted from the estimated refund would now exceed the 175% APR cap. To prevent this clear violation of New Mexico lending law from occurring, the FID should include an additional section in the RAL regulation, NMAC 12.18.9.10, to require that licensees notify borrowers of the date the IRS issues the refund. Additionally, if the licensee receives a refund prior to the time estimated in the initial loan contract, then the licensee should issue a refund to the borrower for the difference between the estimated finance charge on the loan contract and the finance charge calculated for the number of days the loan was actually extended, at the same interest rate originally stated on the contract.

We suggest inserting the following language in mandatory disclosures to borrowers in 12.18.9.7(A)(2): "The APR is calculated pursuant to the estimated time that the best information reasonably available from the Internal Revenue Service indicates individuals may receive their tax refunds."

In our revisions to NMAC 12.18.9.7(A)(4), we emphasize the importance of requiring that the following language be included verbatim, in bold letters and 12-point font, in disclosures made to borrowers of refund anticipation loans: **"You can usually receive your tax refund in 8 to 21 days without getting a loan or paying extra fees. You are not required to take out a refund anticipation loan or refund anticipation check to receive your tax return."** In states that have regulated refund anticipation loans, such disclosures are deemed necessary to help borrowers understand the distinction between their tax refunds from the Internal Revenue Service, and a refund anticipation loan from a licensed lender.

We recommend inserting an additional section NMAC 12.18.9.7(A)(6) with the following language: "the licensee shall give a copy of the form to the borrower and retain a copy in the licensee's file. In addition to providing the written form to the borrower, the licensee shall read the notice orally to the borrower in the borrower's preferred language. The form shall be written in the language in which the notice was given orally to the borrowers." This language echoes the Division's current regulations for payday loan disclosures in NMAC 12.18.7.13. This provision ensures both that this information is conveyed in the language and manner that is most understandable to borrowers, and as well ensures that these disclosures are both meaningful and effective.

Lastly, as set forth above, we recommend including the information regarding all the government entities that a borrower has the right to contact in the event a concern arises with a particular lender that we have recommended be included in both the mandatory brochure, schedule of charges, and, below, on both business and marketing websites.

⁸ 12 CFR Part 1026.17(c) ("Regulation Z").

VII. Language Access

The FID should require that all written disclosures be made available in the language in which the verbal loan transaction is conducted. When a loan transaction is conducted in a language other than English, but all of the written disclosures – on contracts, signage, schedules of charges, brochures, marketing websites, and business websites – are made in English, the borrower does not have access to the same information as a native English speaker at any point in the loan transaction process.

Thus, the new law and the proposed regulations fail to address a practice that is all too common in small loan contracts: the failure to make oral and written disclosures in the borrower's primary language. This practice violates basic common law contract principles, as there is no "meeting of the minds" when a borrower does not understand the terms of the loan they are entering into because the disclosures and contract are written in a language they do not understand. Multiple state courts have held that there is no "meeting of the minds" when a contract is signed in a language that borrowers do not understand.⁹

Furthermore, the New Mexico Unfair Practices Act defines an "unfair or deceptive trade practice" as "an act specifically declared unlawful pursuant to the Unfair Practices Act, a false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods or services or in the extension of credit or in the collection of debts . . . which may, tends to or does deceive or mislead any person."¹⁰ When the terms of a contract for a small loan are presented only partially in the borrower's preferred language, or when there is a difference between the terms of the agreement as they are presented to the borrower and as they are written, that loan transaction runs the dangerous risk of containing false or misleading statements which may deceive the borrower.

It is absolutely necessary that the FID address the issue of language access in these regulations, to prevent the proliferation of potentially unfair practices by licensed lenders. At the very least, all loan documents must be available in Spanish, as well as English, and a licensee must be prohibited from entering into a contract with someone in a language in which they are not proficient.

VIII. Opt-Out Provision for Credit Reporting

We recommend that the FID include an opt-out provision for credit score reporting. While we applaud the legislature for adopting a statute that gives New Mexico borrowers the right build their credit with every payment they make on a small loan, the mandatory reporting requirement does not give borrowers who may have concerns with credit reporting an opportunity to opt out of this provision in the event that they do not wish to have their personal information reported to the major credit reporting agencies.¹¹

Including an opt-out provision in the required disclosures for both RALs and for all other small loan products is a valuable consumer protection consistent with the overarching policy of this new law.

⁹ See *Hialeah Automotive, LLC v. Basulto*, 141 So.3d 1145, (Fla. 2014) (an arbitration agreement did not exist when the contract for the purchase of an automobile was entirely in English and the purchasers could not communicate in English, even though the defendant's employees were able to speak Spanish).

¹⁰ N.M. STAT. ANN. §57-12-2 (2017).

¹¹ N.M. STAT. ANN. 58-7-10 (2017); N.M. STAT. ANN. 58-15-10.2 (2017).

IX. 12.18.10 Electronic Media Requirements

We emphasize the necessity of including the "Electronic Media Requirements," in regulation, as these de facto rules by which the Division has been regulating the online business and marketing of small loans constitute "rules, regulations, or standards" that "affect persons not members of the agency, including affecting persons served by the agency" as defined by Section 14-4-2(F) of the New Mexico Rules Act.

As indicated above, we recommend inserting the same information regarding government entities that a borrower has the right to contact in the event a concern arises with a particular lender that we have recommended in three other sections of these regulations. Including this information on business and marketing sites ensures uniformity in disclosures across all forms of venues in which small loans are made and marketed in New Mexico.

X. Operational Controls and Risk Management Procedures

As stated above with regards to the definition of a rule under the State Rules Act 12-4-2(F), a "rule" is defined as "rules, regulations, or standards" that "affect persons not members of the agency, including affecting persons served by the agency." The Division has shared with us and posted on their website the "Operational Controls and Risk Management Procedures," a document described as follows: *"All licensees under the New Mexico Small Loan Act of 1955 must demonstrate appropriate financial responsibility, character and general fitness as to command the confidence of the public and warrant belief that the business will be operated lawfully, honestly, fairly and efficiently. The Operational Controls and Risk Management Recommendations listed herein are designed to assist applicants and licensees in their continuing efforts to meet these goals."*

These Operational Controls and Risk Management Procedures establish standards to which licensees must conform in order to demonstrate the "appropriate financial responsibility, character, and general fitness" required by Section 58-15-5(F) of the Small Loan Act. As such, this document sets forth the requirements for licensure for all entities seeking to issue small loans in New Mexico. Therefore, it should legally be promulgated in regulation, rather than a de facto rule posted on the Division's website.

Thank you for your consideration of these comments. If you have questions, please contact the New Mexico Center on Law and Poverty by phone at (505) 255-2840 or email at Lindsay@nmpovertylaw.org.

Sincerely,

/s/

New Mexico Center on Law and
Poverty

Navajo Nation Human
Rights Commission

Native American
Voters Alliance

Working Families

Miquela Anaya

Jack Hiatt

NOTICE OF PUBLIC HEARING ON PROPOSED RULEMAKING

The Financial Institutions Division (FID) of the New Mexico Regulation and Licensing Department will convene a public hearing on proposed rule changes pursuant to §58-15-11 NMSA 1978 concerning Title 12 - TRADE, COMMERCE AND BANKING, CHAPTER 18 - LOAN COMPANIES.

The proposed changes are to the following rules:

Repeal the following rules:

- 12.18.2 NMAC - LENDERS' EXCHANGES
- 12.18.5 NMAC - ANNUAL DATA REPORT FOR PAYDAY LOAN LENDERS.
- 12.18.6 NMAC - ANNUAL DATA REPORT FOR TITLE LOAN COMPANIES.

Amendments to the following rules:

- 12.18.3 NMAC - MANDATORY BROCHURE FOR SMALL LOAN BUSINESS, Amending Subsections A, C, D, E and F of Section 8
- 12.18.4 NMAC - MANDATORY SIGNAGE FOR ALL SMALL LOAN COMPANIES, Amending Sections 6 and 7 and Subsections A, C, D, F, E, G and H of Section 8.

Repeal and replace the following rules:

- 12.18.7 NMAC - TERMS AND CONDITIONS OF PAYDAY LOAN AGREEMENTS, Replaced by 12.18.7 NMAC - HEARING PROCEDURES FOR SMALL LOAN COMPANIES.
- 12.18.8 NMAC - LICENSING OF NONRESIDENT LENDERS, Replaced by 12.18.8 NMAC - LICENSING OF NONRESIDENT LENDERS.

Adoption of the following rules:

- 12.18.9 NMAC - REFUND ANTICIPATION LOANS.
- 12.18.10 NMAC - ELECTRONIC MEDIA REQUIREMENTS

The purpose of the rule changes is to adopt requirements and correct inconsistencies to incorporate the provisions of 2017 House Bill 347 which amended provisions of the New Mexico Small Loan Act of 1955, the New Mexico Bank Installment Loan Act of 1959, and the Money, Interest, and Usury statute, concerning certain types of loans in the state of New Mexico. The statutory changes made by 2017 House Bill 347 necessitate the amendment of existing rules concerning, but not limited to, signage and brochures required at licensed small loan company facilities, the repeal of rules related to certain loan products that are no longer permitted under statute, and the adoption of new rule provisions for administrative hearings under the Small Loan Act of 1955.

The hearing will be held before a hearing officer, at which time any interested person is invited to submit data, views or opinions on the proposed changes, orally or in writing.

The hearing will be held at 1:30 p.m. on April 3, 2018 at the New Mexico Regulation and Licensing Department (Toney Anaya Building – Rio Grande Room on the 2nd Floor), located at 2550 Cerrillos Rd., Santa Fe, NM 87504. Interested persons may secure copies of the proposed changes by accessing the FID website:

www.rld.state.nm.us/financialinstitutions/ or by request from the Santa Fe FID Office - Toney Anaya Building, 2550 Cerrillos Rd. Santa Fe, NM 87504. You may send written comments to: Financial Institutions Division P.O. Box 25101, Santa Fe, New Mexico 87504, Attention: Public Comments. Written comments may also be faxed to (505) 476-4670. All comments must be received no later than 5:00 p.m., on April 2, 2018. All public comments and documentation will be entered into the record during the public rules hearing. If you require special accommodations to attend the hearing, please notify FID by phone, email, or fax, of such needs notifying us as

soon as possible to ensure adequate accommodations. Telephone: (505) 476-4885.
Email: maya.otero@state.nm.us; Fax No. (505) 476-4670.

<u>Current Rules</u>	<u>Proposed Rules</u>
<u>12.18.2 NMAC- Lenders' Exchange</u>	<u>12.18.3 NMAC- Mandatory Brochure for Small Loan Business (Amendment)</u>
<u>12.18.3 NMAC- Mandatory Brochure for Small Loan Business</u>	<u>12.18.4 NMAC- Mandatory Signage For All Small Loan Companies (Amendment)</u>
<u>12.18.4 NMAC- Mandatory Signage for Payday Lenders and Title Loan Companies</u>	<u>12.18.7 NMAC- Hearing Procedures for Small Loan Companies (Repeal and Replace)</u>
<u>12.18.5 NMAC- Annual Data Report for Payday Lenders</u>	<u>12.18.8 NMAC- Licensing of Non Resident Lenders (Repeal and Replace)</u>
<u>12.18.6 NMAC- Annual Data Report for Title Loan Companies</u>	<u>12.18.9 NMAC- Refund Anticipation Loans (New Regulation)</u>
<u>12.18.7 NMAC- Terms and Conditions of Payday Loan Agreements</u>	<u>12.18.10 NMAC- Electronic Media Requirements (New Regulation)</u>
<u>12.18.8 NMAC- Licensing of Non Resident Lenders</u>	

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

12.18.3.8 MANDATORY BROCHURE FOR ~~ALL SMALL LOAN COMPANIES~~ BUSINESS

A. All small loan companies licensed by ~~[the state of]~~ 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. The brochure must be easily accessible to consumers on all websites, social media pages, and mobile applications operated by the small loan licensee.]~~

~~[D.]~~ 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."

~~[E.]~~ D. Using lettering no smaller than ~~[+0]~~ 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. 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. ~~No loan shall carry a finance charge, including any direct or indirect charge in connection with the extension of credit, greater than 17.5% APR, including a processing fee not to exceed the lesser of either \$200 or 10% of the loan principal.~~

(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. ~~NM~~

Comment [LC1]: We recommend the FID change this language to be internally consistent throughout the regulations.

Comment [LC2]: We recommend including the following additional language in the definition of "finance charge" the processing fee and APR required by the New Mexico small Loan Act in order to ensure that the brochure is consistent with disclosures required by the federal Truth In Lending Act.

have the right to build your credit history with this loan. Your performance on this loan is required to be reported to a credit reporting agency under New Mexico law.

(14) Fees. No fees other than the following are permitted by the New Mexico Small Loan Act:

- (i.) delinquency charges not to exceed five cents (\$0.05) for each one dollar \$1.00 of each installment 10 days in arrears, provided that the total of delinquency charges on any such installment shall not exceed \$10.00 and that only one delinquency charge is made on any one installment regardless of the period during which the installment remains unpaid;
- (ii.) the actual cost of insurance, as allowed under the New Mexico Small Loan Act
- (iii.) the cost of fees actually paid to a public officer for filing, recording or releasing any instrument or lien;
- (iv.) any associated securities costs where the loan involves collateral;
- (v.) the actual expenditures for legal process or proceedings to collect an installment loan.

(15) Repayment. Under New Mexico law, you have a minimum of one hundred and twenty (120) days to repay your loan, and you have the right to repay your loan in a minimum of four (4) substantially equal installment payments of principal and interest. The 120 days and 4 installment payment requirements do not apply to refund anticipation loans.

[F] E. The brochure shall have the following words, using lettering no smaller than [40]12-point font:
"This lender is licensed and regulated by the New Mexico Regulation and Licensing Department, Financial Institutions Division, [P.O. Box 25104] 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/financialinstitutions/."

- 1) "Additionally, the New Mexico Attorney General's Office provides multi-level services to the public to ensure that consumers have safe and satisfactory interactions with businesses in New Mexico. The Office of the Attorney General does not act and cannot act as a private attorney for individual citizens. However, in some matters, if a consumer is unable to resolve a dispute with a business, the Consumer Protection Division's complaint resolution services may be available. There is no charge to the public for these services. For inquiries or complaints, the Attorney General's Office can be reached toll-free at (505) 490-4060 or by submitting a complaint via this link, <http://www.nmag.gov/consumer-complaint-instructions.aspx>."
- 2) "The Consumer Financial Protection Bureau is a U.S. government agency that helps connect consumers with financial companies to understand issues, fix errors, and get direct responses about problems. For inquiries or complaints, the Consumer Financial Protection Bureau can be reached toll-free at (855) 411-2372 or <https://www.consumerfinance.gov/complaint/getting-started/>."

Comment [LC3]: We recommend including this additional information in the mandatory brochure to disclose to borrowers that credit performance will be reported under the new law

Formatted: Indent: Left: 0"

Formatted: Indent: Left: 1.5"

Comment [LC4]: We recommend including a definition of repayment in the mandatory brochure so that borrowers are aware of the 120 day minimum repayment period and 4 installment payments they must be given

Comment [LC5]: We recommend the FID substantiate the list of entities that borrowers have the right to contact in the event they have a concern with a particular lender by including in the mandatory brochure the contact information for the New Mexico Attorney General's Office and the federal Consumer Financial Protection Bureau. Adding this contact information ensures that concerns with a particular loan are directed to the appropriate government agency and gives borrowers access to important information about these government agencies that would otherwise be very difficult to locate

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

This is an amendment to 12.18.4 NMAC, title of part, and Sections 2, 6, 7, and 8, effective XX/XX/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 ~~[the State of]~~ New Mexico.
[12.18.4.2 NMAC - N, 10/1/2001, A, XX/XX/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]~~ loan rates and fees to assist consumers in the loan decision process.
[12.18.4.6 NMAC - N, 10/1/2001, A, XX/XX/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.]~~ "Annual Percentage Rate" or "APR" means the measure of the cost of credit, expressed as a yearly rate, as defined by 12 CFR 1026, known as "Regulation Z."

~~[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.]~~
[12.18.4.7 NMAC - N, 10/1/2001, A, XX/XX/2018]

Comment [LC6]: We recommend citing to Regulation Z in the definition of APR.

12.18.4.8 MANDATORY SIGNAGE FOR ~~[PAYDAY LENDERS AND TITLE]~~ 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]~~ range of the annual percentage rates 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]~~ shall be easily assessable to consumers to review on all websites, social media pages, and mobile applications operated by a licensed small loan company.

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 FEE"]~~

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) 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) schedule (must) shall consist of two distinctive sections. Each section must have the following headings starting from left to right. The borders for the first two 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, and a statement that says "Unless you are taking out a refund anticipation loan, New Mexico law requires at least a 120 day repayment period."

(a) The heading shall be followed with a table disclosing the lowest and highest annual percentage rates for each loan product type offered.

(b) Below the preceding table 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."

(c) 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

Comment [LC7]: We recommend keeping the "SCHEDULE OF CHARGES" language rather than replacing it with "LOAN RATES AND FEE" to ensure internal consistency.

Comment [LC8]: As written, the proposed NMAC 12.18.4.8 Subsection (E) states that the schedule of charges shall consist of two distinctive sections, and then describes five required headings. It is not clear from the proposed Subsection (E) how these headings should be divided into two distinctive sections.

Comment [LC9]: This important disclosure should be included on the schedule of charges.

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" ~~("FINANCE CHARGE")~~ "FEES" followed by the words in 14-point font, "The dollar amount the credit will cost you" ~~in 14-point font, "The dollar amount the credit will cost you"~~ "A list of all additional 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." Pursuant to New Mexico law, the number of installment payments listed must be at least 4, and each payment must consist of substantially equal principal and interest, unless the loan is a refund anticipation loan.

(6) Below the SCHEDULE OF CHARGES consisting of the above five headings shall be a separate section with a heading that shall have the word "FEES" in bold capital letters, followed by the words "A list of all additional fees that you may be charged, as permitted under new Mexico law." The heading shall be followed by a table containing a list of all fees permitted by the New Mexico Bank Installment Loan Act of 1959 and the New Mexico Small Loan Act of 1959.

~~[F.] Below the chart headings, the company must have illustrative examples for 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 name, address, ~~and~~ 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 87501-0101. 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/>."

- 1) Additionally, the New Mexico Attorney General's Office provides multilevel services to the public to ensure that consumers have safe and satisfactory interactions with businesses in New Mexico. The Office of the Attorney General does not act and cannot act as a private attorney for individual citizens. However, in some matters, if a consumer is unable to resolve a dispute with a business, the Consumer Protection Division's complaint resolution services may be available. There is no charge to the public for these services. For inquiries or complaints, the Attorney General's Office can be reached toll-free at (505) 490-4060 or by submitting a complaint via this link, <http://www.nmag.gov/consumer-complaint-instructions.aspx>."
- 2) "The Consumer Financial Protection Bureau is a U.S. government agency that helps connect consumers with financial companies to understand issues, fix errors, and get direct responses about problems. For inquiries or complaints, the Consumer Financial Protection Bureau can be reached toll-free at (855) 411-2372 or <https://www.consumerfinance.gov/complaint/getting-started/>."

Comment [LC10]:

The schedule of charges should mirror the Truth in Lending Act disclosures that borrowers will see on their loan documents, and as is required by the current regulations. To this end, we suggest the second heading reading "FINANCE CHARGE, the dollar amount the credit will cost you" not be deleted from these regulations

While we share the concern indicated by the FID in proposing that all legally permitted fees be disclosed on in-store signage, the disclosure of fees should not supplement TILA disclosures

Below the schedule of charges, we recommend including a separate heading "FEES: a list of all additional fees that you may be charged" which then lists all fees that the lender is legally permitted to charge a borrower under federal and New Mexico law

Comment [LC11]: Instead, we recommend that a separate section be included in the schedule of charges stating all legally permissible fees that the licensee could potentially charge the borrower.

Comment [LC12]: We recommend including the information regarding all the government entities that a borrower has the right to contact in the event a concern arises with a particular lender that we have recommended be included in the mandatory brochure, schedule of charges, and, below, on both business and marketing websites

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

TITLE 12 TRADE, COMMERCE AND BANKING

CHAPTER 18 LOAN COMPANIES

PART 6 ANNUAL DATA REPORT FOR ~~TITLE~~ SMALL LOAN COMPANIES

12.18.6.1 ISSUING AGENCY: Financial Institutions Division of the Regulation and Licensing Department.

[12.18.6.1 NMAC - N, 4/4/2004]

12.18.6.2 SCOPE: ~~Loan companies conducting title loan~~ Small Loan licensees conducting business in the state of New Mexico.

[12.18.6.2 NMAC - N, 4/4/2004]

12.18.6.3 STATUTORY AUTHORITY: Section 58-15-10 NMSA 1978.

[12.18.6.3 NMAC - N, 4/4/2004]

12.18.6.4 DURATION: Permanent.

[12.18.7.4 NMAC - Rp, 12.18.7.4 NMAC, N, 4/4/2004]

12.18.6.5 EFFECTIVE DATE: January 1, 2004, unless a later date is cited at the end of a section.

[12.18.6.4 NMAC - N, 4/4/2004]

12.18.6.6 OBJECTIVE: The objective of this part is to ~~require a small loan licensee that issues title loans to file an annual report on specific loan products sold, certain lending practices, and fees the licensee charges to borrowers~~, with the financial institutions division for data collection purposes.

[12.18.6.6 NMAC - N, 4/4/2004]

12.18.6.7 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. "Holiday loan" ~~A holiday loan is not a refund anticipation loan. A holiday loan is made in advance of the tax return season, often based on an estimate of a borrower's tax refund. However, because a holiday loan is extended prior to the end of the calendar year, it is based only on an estimate of how much income a borrower will have earned by the end of the year. Because a borrower has not yet filed their taxes, a holiday loan is not secured by the borrower's tax refund.~~

B.C. "Director" means the director of the financial institutions division of the regulation and licensing department.

C. D. "Division" means the financial institutions division of the regulation and licensing department.

[12.18.6.7 NMAC - N, 4/4/2004]

12.18.6.8 ANNUAL DATA REPORT FOR ~~TITLE~~ SMALL LOAN COMPANIES: Beginning with the annual report required to be filed with the division on or before March 31, ~~2012~~ 2005 under Section 58-15-10 NMSA 1978, small loan licensees shall include in the annual report information pertaining to each type of title loans they made during the preceding calendar year in a form prescribed by the director, including but not limited to the number of loans of each product; the total dollar amount of principal for each loan product issued; the total dollar amount of fees for each loan product issued; the average cost of fees charged to a borrower, segregated by each loan product issued; the number of loans renewed, refinanced, or extended prior to being repaid in full. The director shall prescribe additional reporting requirements pursuant to the director's authority to do so under the NMSA 58-15-11.

[12.18.6.8 NMAC - N, 4/4/2004]

12.18.6.9 HISTORY OF 12.18.6 NMAC: [RESERVED]

Comment [LC13]: We recommend inserting a definition of holiday loan to eliminate the confusion between holiday loans and refund anticipation loans and clarify the distinction between the two products.

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

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, XX/XX/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, XX/XX/2018]

12.18.7.3 STATUTORY AUTHORITY: Section 58-15-11 NMSA 1978.

[12.18.7.3 NMAC - Rp, 12.18.7.3 NMAC, XX/XX/2018]

12.18.7.4 DURATION: Permanent.

[12.18.7.4 NMAC - Rp, 12.18.7.4 NMAC, XX/XX/2018]

12.18.7.5 EFFECTIVE DATE: Month day, 2018, unless a later date is cited at the end of a section.

[12.18.7.5 NMAC - Rp, 12.18.7.5 NMAC, XX/XX/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, XX/XX/2018]

12.18.7.7 DEFINITIONS: ~~RESERVED~~

A. ~~The term "debit authorizations" includes debit authorizations and draft authorizations.~~

[12.18.7.7 NMAC - Rp, 12.18.7.7 NMAC, XX/XX/2018]

12.18.7.8 EXEMPTIONS: If the borrower, or the person acting for the benefit of the borrower, chooses to provide a wage assignment, or a debit or draft authorization, such authorization may be revoked at any time upon the written request of the person providing the authorization. If the borrower, or the person acting for the benefit of the borrower, has provided one or more postdated checks, any such checks that have not been deposited shall be returned upon the written request of the person providing such checks.

12.18.7.9 PROHIBITED ACTS:

A. A licensee shall not deposit a post dated check before the date state on the face of the check.

B. Early Repayment

12.18.7.10 HOLIDAY LOAN: A holiday loan is not a refund anticipation loan. A holiday loan is made in advance of the tax return season, often based on an estimate of a borrower's tax refund. However, because a holiday loan is extended prior to the end of the calendar year, it is based only on an estimate of how much income a borrower will have earned by the end of the year. Because a borrower has not yet filed their taxes, a holiday loan is not secured by the borrower's tax refund.

Comment [LC14]: We recommend inserting a definition of holiday loan here as well as to eliminate the confusion between holiday loans and refund anticipation loans and clarify the distinction between the two products, consistent with the position the FID has taken in reporting requirements for these two loan products

12.18.7.11 DEFINING WHAT IT MEANS TO MAKE A LOAN

A. "Loan Modification" means any change to the terms of an existing loan agreement by the same lender, including but not limited to, to the principal amount financed, the APR, finance charge, fees and payment schedule. Any such changes to the terms of an existing loan agreement shall constitute a new loan under both the New Mexico Small Loan Act of 1955 and New Mexico Bank Installment Loan Act 1959 and should require new Truth in Lending Act disclosure.

Comment [LC15]: If an existing loan renewed or modified, that transaction constitutes the a new loan contract. We're concerned without immediate clarification around the definitions of these terms in regulation, outstanding loans made prior to 2018 will continue to be rolled over without regard for the interest rate and repayment requirements of H.B. 347

Formatted: List Paragraph, Indent: Left: 1"

B. "Refinance" defined by 12 CFR 1026.2(a) ("Regulation Z") occurs when an existing obligation that was subject to the New Mexico Small Loan Act of 1955 or New Mexico Bank Installment Loan Act 1959 is satisfied and replaced with a new obligation undertaken by the same borrower. A refinancing is a new transaction requiring new disclosures to the consumer. The new finance charge shall include any unearned portion of the old finance charge that is not credited to the existing obligation. A refinance shall constitute a loan modification.

C. "Renewal" occurs when a lender extends the life of a loan through a change in the payment schedule, rate, or payment amount of the original loan agreement. A renewal shall constitute a loan modification.

E. "Rollover" See "Renewal."

F. "Loan Extension" See "Renewal."

12.18.7.8XX 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.

[12.18.7.8XX NMAC - Rp, 12.18.7.9XX NMAC, XX/XX/2018]

12.18.7.9XX - 12.18.7.16 [RESERVED]

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~~ Terms and Conditions of Small Loan Agreements ~~Small Loan Companies~~, effective XX/XX/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, XX/XX/2018]

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

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

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

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

12.18.8.7 DEFINITIONS: [RESERVED]
 [12.18.8.7 NMAC - Rp, 12.18.8.7 NMAC, XX/XX/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, in person, by telephone, or via the internet, 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

Comment [LC16]: We recommend only minor revisions to this section to ensure that NMAC 12.18.8 is inclusive of all regulation loan transactions made by non-resident lenders.

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, ~~negotiating, executing, or entering into~~ 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. 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, XX/XX/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 XX/XX/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, X/XX/XXXX]

12.18.9.2 SCOPE: Loan companies conducting refund anticipation loans in the state of New Mexico.

[12.18.9.2 NMAC - N, X/XX/XXXX]

12.18.9.3 STATUTORY AUTHORITY: Section 58-15-11 NMSA 1978.

[12.18.9.3 NMAC - N, X/XX/XXXX]

12.18.9.4 DURATION: Permanent

[12.18.9.4 NMAC - N, X/XX/XXXX]

12.18.9.5 EFFECTIVE DATE: Month XX, XXXX, unless a later date is cited at the end of a section.

[12.18.9.5 NMAC - N, X/XX/XXXX]

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, X/XX/XXXX]

12.18.9.7 MANDATORY DISCLOSURE OF LOAN INFORMATION:

A. All small loan companies engaged in the business of making refund anticipation loans must provide a form to consumers that includes the following:

(1) A 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.

(2) a list of the annual percentage rate and all fees that the borrower may be charged upon entering the refund anticipation loan agreement. The APR is calculated pursuant to the estimated time that the best information reasonably available from the Internal Revenue Service indicates individuals may receive their tax refunds;

(3) the estimated time to which the consumer may receive the proceeds from their anticipated tax refund or tax credit based on the best information reasonably available;

(4) the following statement in bold letters: **"You may receive your tax refund in as little as 8 to 21 days without getting a loan or paying extra fees. You are not required to take out a refund anticipation loan or refund anticipation check to receive your tax return; and**

(5) the following statement in at least 12 point bold type:

(a) 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.

(b) 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.

(c) You are responsible for the full repayment of this refund anticipation loan and for the payment of the total interest, fees, and charges incurred.

(d) 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.

(6) The licensee shall give of copy of the form containing these disclosures to the borrower and retain a copy in the borrower's file. In addition to providing the written form to the borrower, the

Comment [LC17]: We recommend inserting the definition of refund anticipation loan included in Section 15-15-2 of the New Mexico Small Loan Act so that disclosures clearly state what the refund anticipation loan product entails

Comment [LC18]: This disclosure is important to ensure uniformity in the time frame in which tax refund anticipation loan finance charges are ca

Comment [LC19]: We emphasize the importance of requiring that the following language be included verbatim, in bold letters and 12-point font, in disclosures made to borrowers of refund anticipation loans

licensee shall read the notice orally to the borrower in the borrower's preferred language. The form shall be written in the language in which the notice was read orally to the consumer.

[12.18.9.7 NMAC - N, X/XX/XXXX]

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

(1) directly or indirectly represent a refund anticipation loan as a refund or tax credit;
(2) require a borrower to enter into a loan agreement in order to complete a tax return;
(3) 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 for Refund Anticipation Loans;

(4) 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;

(5) withhold from a consumer, or from a dependent of a consumer, original personal identification documents; and

(6) recalculate, upon repayment of the loan, the annual percentage rate (APR) as defined by 12 CFR 226, known as "Regulation Z."

[12.18.9.8 NMAC - N, X/XX/XXXX]

12.18.9.9 BUSINESS SITE REQUIREMENTS: This above disclosure shall be a separate disclosure containing 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/>."

1) "Additionally, the New Mexico Attorney General's Office provides multilevel services to the public to ensure that consumers have safe and satisfactory interactions with businesses in New Mexico. The Office of the Attorney General does not act and cannot act as a private attorney for individual citizens. However, in some matters, if a consumer is unable to resolve a dispute with a business, the Consumer Protection Division's complaint resolution services may be available. There is no charge to the public for these services. For inquiries or complaints, the Attorney General's Office can be reached toll-free at (505) 490-4060 or by submitting a complaint via this link, <http://www.nmag.gov/consumer-complaint-instructions.aspx>."

2) "The Consumer Financial Protection Bureau is a U.S. government agency that helps connect consumers with financial companies to understand issues, fix errors, and get direct responses about problems. For inquiries or complaints, the Consumer Financial Protection Bureau can be reached toll-free at (855) 411-2372 or <https://www.consumerfinance.gov/complaint/getting-started/>."

[12.18.9.11 NMAC - N, X/XX/XXXX]

12.18.9.10 NOTIFICATION TO BORROWERS UPON RECEIPT OF TAX REFUND

A. Licensees must notify borrowers of the date the licensee receives the borrower's tax refund as well as the date that the tax refund states the Internal Revenue Service issued the refund.

B. If the licensee receives a refund prior to the time estimated in the initial loan contract, then the licensee must issue a refund to the borrower for the difference between the estimated finance charge on the loan contract and the finance charge calculated for the number of days the loan was actually extended, at the same interest rate originally stated on the contract.

HISTORY of 12.18.9 NMAC: [RESERVED]

Comment [LC20]: We recommend inserting an additional NMAC 12.18.9.7(A)(7) with this language. This provision ensures both that the information is conveyed in the language and manner that is most understandable to borrowers, as well as ensures that these disclosures are both meaningful and effective

Comment [LC21]: We recommend the FID substantiate the list of entities that borrowers have the right to contact in the event they have a concern with a particular lender issuing RALs by including in the mandatory business site requirements the contact information for the New Mexico Attorney General's Office and the federal Consumer Financial Protection Bureau. Adding this contact information ensures that concerns with a particular loan are directed to the appropriate government agency and gives borrowers access to important information about these government agencies that would otherwise be very difficult to locate

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, X/XX/XXXX]

12.18.10.2 SCOPE: All licensees conducting business in the state of New Mexico.

[12.18.10.2 NMAC - N, X/XX/XXXX]

12.18.10.3 STATUTORY AUTHORITY: Section 58-15-11 NMSA 1978.

[12.18.10.3 NMAC - N, X/XX/XXXX]

12.18.10.4 DURATION: Permanent

[12.18.10.4 NMAC - N, X/XX/XXXX]

12.18.10.5 EFFECTIVE DATE: Month XX, XXXX, unless a later date is cited at the end of a section.

[12.18.10.5 NMAC - N, X/XX/XXXX]

12.18.10.6 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.

[12.18.10.6 NMAC - N, X/XX/XXXX]

12.18.10.7 MARKETING SITE REQUIREMENTS:

A. Small loan businesses operating one or more marketing site(s) shall be responsible for 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 in a location or locations on the marketing site that will be easily accessible and visible to consumers accessing such marketing site.

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 name, 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/>."

- 1) Additionally, the New Mexico Attorney General's Office provides multilevel services to the public to ensure that consumers have safe and satisfactory interactions with businesses in New Mexico. The Office of the Attorney General does not act and cannot act as a private attorney for individual citizens. However, in some matters, if a consumer is unable to resolve a dispute with a business, the Consumer Protection Division's complaint resolution services may be

Comment [LC22]: We emphasize the necessity of including the "Electronic Media Requirements" i regulation, as these de facto rules by which the FIC has been regulation the online business and marketing of small loans constitutes "rules, regulations, or standards" that "affect persons served by the agency" as defined by Section 12-4-2(F) of the New Mexico Rules Act.

Comment [LC23]: We recommend the FID substantiate the list of entities that borrowers have the right to contact in the event they have a conce with a particular lender by including in the marketing site requirements the contact information for the New Mexico Attorney General's Office and the federal Consumer Financial Protection Bureau. Adding this contact information ensures that concerns with a particular loan are directed to the appropriate government agency an gives borrowers access to important information about these government agencies that would otherwise be very difficult to locate

available. There is no charge to the public for these services. For inquiries or complaints, the Attorney General's Office can be reached toll-free at (505) 490-4060 or by submitting a complaint via this link, <http://www.nmac.gov/consumer-complaint-instructions.aspx>."

- 2) "The Consumer Financial Protection Bureau is a U.S. government agency that helps connect consumers with financial companies to understand issues, fix errors, and get direct responses about problems. For inquiries or complaints, the Consumer Financial Protection Bureau can be reached toll-free at (855) 411-2372 or <https://www.consumerfinance.gov/complaint/getting-started/>"

[12.18.10.7 NMAC - N, X/XX/XXXX]

12.18.10.8 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 assessable 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 name, 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/>."

- 1) "Additionally, the New Mexico Attorney General's Office provides multilevel services to the public to ensure that consumers have safe and satisfactory interactions with businesses in New Mexico. The Office of the Attorney General does not act and cannot act as a private attorney for individual citizens. However, in some matters, if a consumer is unable to resolve a dispute with a business, the Consumer Protection Division's complaint resolution services may be available. There is no charge to the public for these services. For inquiries or complaints, the Attorney General's Office can be reached toll-free at (505) 490-4060 or by submitting a complaint via this link, <http://www.nmac.gov/consumer-complaint-instructions.aspx>."
- 2) "The Consumer Financial Protection Bureau is a U.S. government agency that helps connect consumers with financial companies to understand issues, fix errors, and get direct responses about problems. For inquiries or complaints, the Consumer Financial Protection Bureau can be reached toll-free at (855) 411-2372 or <https://www.consumerfinance.gov/complaint/getting-started/>"

Comment [LC24]: We recommend the FID substantiate the list of entities that borrowers have the right to contact in the event they have a concern with a particular lender by including in the marketing site requirements the contact information for the New Mexico Attorney General's Office and the federal Consumer Financial Protection Bureau. Adding this contact information ensures that concerns with a particular loan are directed to the appropriate government agency and gives borrowers access to important information about these government agencies that would otherwise be very difficult to locate.

[12.18.10.8 NMAC - N, X/XX/XXXX]

HISTORY of 12.18.10 NMAC: [RESERVED]

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 18 LOAN COMPANIES
PART 10 OPERATIONAL CONTROLS AND RISK MANAGEMENT PROCEDURES

Comment [LC25]:

As stated above with regards to the definition of a rule under the State Rules Act 12-4-2(F) a "rule" includes rules, regulations or standard that affect person served by the agency

The Division has posted on their website the "Operational Controls and Risk Management Procedures," a document described as follows: "All licensees under the New Mexico Small Loan Act of 1955 must demonstrate appropriate financial responsibility, character and general fitness as to command the confidence of the public and warrant belief that the business will be operate lawfully, honestly, fairly and efficiently. The operational Controls and Risk Management Recommendations listed herein are designed to assist applicants and licensees in their continuing efforts to meet these goals."

These operational controls and risk management procedures establish standards to which licensee must conform in order to demonstrate the appropriate financial responsibility, character and general fitness required by the Small Loan Act. This document clarifies the requirements for licensure for all entities seeking to issue small loans in New Mexico, therefore, it should legally be promulgated in regulation, rather than a de facto rule posted on the Division's website.



NOTICE OF PUBLIC HEARING ON PROPOSED RULEMAKING

The Financial Institutions Division (FID) of the New Mexico Regulation and Licensing Department will convene a public hearing on proposed rule changes pursuant to §58-15-11 NMSA 1978 concerning Title 12 - TRADE, COMMERCE AND BANKING, CHAPTER 18 - LOAN COMPANIES.

The proposed changes are to the following rules:

Repeal the following rules:

- 12.18.2 NMAC - LENDERS' EXCHANGES.
- 12.18.5 NMAC - ANNUAL DATA REPORT FOR PAYDAY LOAN LENDERS.
- 12.18.6 NMAC - ANNUAL DATA REPORT FOR TITLE LOAN COMPANIES.

Amendments to the following rules:

- 12.18.3 NMAC - MANDATORY BROCHURE FOR SMALL LOAN BUSINESS, Amending Subsections A, C, D, E and F of Section 8
- 12.18.4 NMAC - MANDATORY SIGNAGE FOR ALL SMALL LOAN COMPANIES, Amending Sections 6 and 7 and Subsections A, C, D, F, E, G and H of Section 8.

Repeal and replace the following rules:

- 12.18.7 NMAC - TERMS AND CONDITIONS OF PAYDAY LOAN AGREEMENTS, Replaced by 12.18.7 NMAC - HEARING PROCEDURES FOR SMALL LOAN COMPANIES.
- 12.18.8 NMAC - LICENSING OF NONRESIDENT LENDERS, Replaced by 12.18.8 NMAC - LICENSING OF NONRESIDENT LENDERS.

Adoption of the following rules:

- 12.18.9 NMAC - REFUND ANTICIPATION LOANS.
- 12.18.10 NMAC - ELECTRONIC MEDIA REQUIREMENTS.

The purpose of the rule changes is to adopt requirements and correct inconsistencies to incorporate the provisions of 2017 House Bill 347 which amended provisions of the New Mexico Small Loan Act of 1955, the New Mexico Bank Installment Loan Act of 1959, and the Money, Interest, and Usury statute, concerning certain types of loans in the state of New Mexico. The statutory changes made by 2017 House Bill 347 necessitate the amendment of existing rules concerning, but not limited to, signage and brochures required at licensed small loan company facilities, the repeal of rules related to certain loan products that are no longer permitted under statute, and the adoption of new rule provisions for administrative hearings under the Small Loan Act of 1955.

The hearing will be held before a hearing officer, at which time any interested person is invited to submit data, views or opinions on the proposed changes, orally or in writing.

The hearing will be held at 1:30 p.m. on April 3, 2018 at the New Mexico Regulation and Licensing Department (Toney Anaya Building – Rio Grande Room on the 2nd Floor), located at 2550 Cerrillos Rd., Santa Fe, NM 87504.

Interested persons may secure copies of the proposed changes by accessing the FID website:

www.rld.state.nm.us/financialinstitutions/ or by request from the Santa Fe FID Office - Toney Anaya Building, 2550 Cerrillos Rd. Santa Fe, NM 87504. You may send written comments to: Financial Institutions Division P.O. Box 25101, Santa Fe, New Mexico 87504, Attention: Public Comments. Written comments may also be faxed to (505) 476-4670. All comments must be received no later than 5:00 p.m., on April 2, 2018. All public comments and documentation will be entered into the record during the public rules hearing. If you require special accommodations to attend the hearing, please notify FID by phone, email, or fax, of such needs notifying us as

soon as possible to ensure adequate accommodations. Telephone: (505) 476-4885.
 Email: maya.otero@state.nm.us; Fax No. (505) 476-4670.

Current Rules	Proposed Rules
<u>12.18.2 NMAC- Lenders' Exchange</u>	<u>12.18.3 NMAC- Mandatory Brochure for Small Loan Business (Amendment)</u>
<u>12.18.3 NMAC- Mandatory Brochure for Small Loan Business</u>	<u>12.18.4 NMAC- Mandatory Signage For All Small Loan Companies (Amendment)</u>
<u>12.18.4 NMAC- Mandatory Signage for Payday Lenders and Title Loan Companies</u>	<u>12.18.7 NMAC- Hearing Procedures for Small Loan Companies (Repeal and Replace)</u>
<u>12.18.5 NMAC- Annual Data Report for Payday Lenders</u>	<u>12.18.8 NMAC- Licensing of Non Resident Lenders (Repeal and Replace)</u>
<u>12.18.6 NMAC- Annual Data Report for Title Loan Companies</u>	<u>12.18.9 NMAC- Refund Anticipation Loans (New Regulation)</u>
<u>12.18.7 NMAC- Terms and Conditions of Payday Loan Agreements</u>	<u>12.18.10 NMAC- Electronic Media Requirements (New Regulation)</u>
<u>12.18.8 NMAC- Licensing of Non Resident Lenders</u>	

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

12.18.3.8 MANDATORY BROCHURE FOR ~~ALL SMALL LOAN COMPANIES BUSINESS~~

A. All small loan companies licensed by ~~[the state of]~~ 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. The brochure must be easily assessable to consumers on all websites, social media pages, and mobile applications operated by the small loan licensee.]~~

~~[D.]~~ 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."

~~[E.]~~ D. Using lettering no smaller than ~~[10]~~ 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. 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. ~~No loan shall carry a finance charge, including any direct or indirect charges in connection with the extension of credit, greater than 175% APR, including a processing fee not to exceed the lesser of either \$200 or 10% of the loan principal.~~

(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. ~~You~~

Comment [LC1]: We recommend the FID change this language to be internally consistent throughout the regulations.

Comment [LC2]: We recommend including the following additional language in the definition of "finance charge:" the processing fee and APR required by the New Mexico small Loan Act in order to ensure that the brochure is consistent with disclosures required by the federal Truth in Lending Act.

have the right to build your credit history with this loan. Your performance on this loan is required to be reported in a credit reporting agency under New Mexico law.

(14) Fees. No fees other than the following are permitted by the New Mexico Small Loan Act:

- (i.) delinquency charges not to exceed five cents (\$0.05) for each one dollar \$1.00 of each installment 10 days in arrears, provided that the total of delinquency charges on any such installment shall not exceed \$10.00 and that only one delinquency charge is made on any one installment regardless of the period during which the installment remains unpaid;
- (ii.) the actual cost of insurance, as allowed under the New Mexico Small Loan Act
- (iii.) the cost of fees actually paid to a public officer for filing, recording or releasing any instrument or lien;
- (iv.) any associated securities costs where the loan involves collateral;
- (v.) the actual expenditures for legal process or proceedings to collect an installment loan.

(15) Repayment. Under New Mexico law, you have a minimum of one hundred and twenty (120) days to repay your loan, and you have the right to repay your loan in a minimum of four (4) substantially equal installment payments of principal and interest. The 120 days and 4 installment payment requirements do not apply to refund anticipation loans.

[F.] E. The brochure shall have the following words, using lettering no smaller than [40]12-point font: "This lender is licensed and regulated by the New Mexico Regulation and Licensing Department, Financial Institutions Division, ~~P.O. Box 25104~~ 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/financialinstitutions/."

- 1) Additionally, the New Mexico Attorney General's Office provides multilevel services to the public to ensure that consumers have safe and satisfactory interactions with businesses in New Mexico. The Office of the Attorney General does not act and cannot act as a private attorney for individual citizens. However, in some matters, if a consumer is unable to resolve a dispute with a business, the Consumer Protection Division's complaint resolution services may be available. There is no charge to the public for these services. For inquiries or complaints, the Attorney General's Office can be reached toll-free at (505) 490-4060 or by submitting a complaint via this link, <http://www.nmag.gov/consumer-complaint-instructions.aspx>"
- 2) "The Consumer Financial Protection Bureau is a U.S. government agency that helps connect consumers with financial companies to understand issues, fix errors, and get direct responses about problems. For inquiries or complaints, the Consumer Financial Protection Bureau can be reached toll-free at (855) 411-2372 or <https://www.consumerfinance.gov/complaint/getting-started/>"

Comment [LC3]: We recommend including this additional information in the mandatory brochure to disclose to borrowers that credit performance will be reported under the new law.

Formatted: Indent: Left: 0"

Formatted: Indent: Left: 1.5"

Comment [LC4]: We recommend including a definition of repayment in the mandatory brochure so that borrowers are aware of the 120 day minimum repayment period and 4 installment payments they must be given.

Comment [LC5]: We recommend the FID substantiate the list of entities that borrowers have the right to contact in the event they have a concern with a particular lender by including in the mandatory brochure the contact information for the New Mexico Attorney General's Office and the federal Consumer Financial Protection Bureau. Adding this contact information ensures that concerns with a particular loan are directed to the appropriate government agency and gives borrowers access to important information about these government agencies that would otherwise be very difficult to locate.

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

This is an amendment to 12.18.4 NMAC, title of part, and Sections 2, 6, 7, and 8, effective XX/XX/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 ~~[the State of]~~ New Mexico.
[12.18.4.2 NMAC - N, 10/1/2001, A, XX/XX/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]~~ loan rates and fees to assist consumers in the loan decision process.
[12.18.4.6 NMAC - N, 10/1/2001, A, XX/XX/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.]~~ "Annual Percentage Rate" or "APR" means the measure of the cost of credit, expressed as a yearly rate, as defined by 12 CFR 1026, known as "Regulation Z."

~~[B. "Payday" loan means a loan where the business operator cashes a personal check tendered by the customer and agrees in writing to defer presentment of that check until the customer's next payday, or another date agreed to by the business operator and the customer.]~~
[12.18.4.7 NMAC - N, 10/1/2001; A, XX/XX/2018]

12.18.4.8 MANDATORY SIGNAGE FOR ~~[PAYDAY LENDERS AND TITLE]~~ 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]~~ range of the annual percentage rates 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]~~ shall be easily assessable to consumers to review on all websites, social media pages, and mobile applications operated by a licensed small loan company.

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 FEE."]~~

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] 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] schedule [must] shall consist of two distinctive sections. Each section must have the following headings starting from left to right. The borders for the first two 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, and a statement that says ~~["Below is an example of a refund calculation for a loan with a 14-day repayment period."]~~

(a) The heading shall be followed with a table disclosing the lowest and highest annual percentage rates for each loan product type offered.

(b) Below the preceding table 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."

(c) 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

Comment [LC6]: We recommend citing to Regulation Z in the definition of APR.

Comment [LC7]: We recommend keeping the "SCHEDULE OF CHARGES" language rather than replacing it with "LOAN RATES AND FEE" to ensure internal consistency.

Comment [LC8]: As written, the proposed NMAC 12.18.4.8 Subsection (E) states that the schedule of charges shall consist of two distinctive sections, and then describes five required headings. It is not clear from the proposed Subsection (E) how these headings should be divided into two distinctive sections.

Comment [LC9]: This important disclosure should be included on the schedule of charges.

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 [“FINANCE CHARGE”]-“FEES” followed by the words in 14-point font, “The dollar amount the credit will cost you.” [in 14-point font, “The dollar amount the credit will cost you.”] “A list of all additional 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.” Pursuant to New Mexico law, the number of installment payments listed must be at least 4, and each payment must consist of substantially equal principal and interest, unless the loan is a refund anticipation loan.

(6) Below the ~~“FINANCE CHARGE”-“FEES”~~ consisting of the above five headings shall be a separate section with a heading that shall have the word “FEES” in bold capital letters, followed by the words “A list of all additional fees that you may be charged, as permitted under new Mexico law.” The heading shall be followed by a table containing a list of all fees permitted by the New Mexico Bank Installment Loan Act of 1959 and the New Mexico Small Loan Act of 1955.

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

[G.] E. 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 name, address, [and] 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 87501-0101. 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/>.”

- 1) ~~“Additionally, the New Mexico Attorney General’s Office provides multilevel services to the public to ensure that consumers have safe and satisfactory interactions with businesses in New Mexico. The Office of the Attorney General does not act and cannot act as a private attorney for individual citizens. However, in some matters, if a consumer is unable to resolve a dispute with a business, the Consumer Protection Division’s complaint resolution services may be available. There is no charge to the public for these services. For inquiries or complaints, the Attorney General’s Office can be reached toll-free at (505) 490-4060 or by submitting a complaint via this link, <http://www.nmag.gov/consumer-complaint-instructions.aspx>”~~
- 2) “The Consumer Financial Protection Bureau is a U.S. government agency that helps connect consumers with financial companies to understand issues, fix errors, and get direct responses about problems. For inquiries or complaints, the Consumer Financial Protection Bureau can be reached toll-free at (855) 411-2372 or <https://www.consumerfinance.gov/complaint/getting-started/>”

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

Comment [LC10]:

The schedule of charges should mirror the Truth in Lending Act disclosures that borrowers will see on their loan documents, and as is required by the current regulations. To this end, we suggest the second heading reading “FINANCE CHARGE: the dollar amount the credit will cost you” not be deleted from these regulations.

While we share the concern indicated by the FID in proposing that all legally permitted fees be disclosed on in-store signage, the disclosure of fees should not supplement TILA disclosures.

Below the schedule of charges, we recommend including a separate heading “FEES: a list of all additional fees that you may be charged” which then lists all fees that the lender is legally permitted to charge a borrower under federal and New Mexico law.

Comment [LC11]: Instead, we recommend that a separate section be included in the schedule of charges stating all legally permissible fees that the licensee could potentially charge the borrower.

Comment [LC12]: We recommend including the information regarding all the government entities that a borrower has the right to contact in the event a concern arise with a particular lender that we have recommended be included in the mandatory brochure, schedule of charges, and, below, on both business and marketing websites .

TITLE 12 TRADE, COMMERCE AND BANKING

CHAPTER 18 LOAN COMPANIES
PART 6 ANNUAL DATA REPORT FOR ~~TITLE~~ SMALL LOAN COMPANIES

12.18.6.1 ISSUING AGENCY: Financial Institutions Division of the Regulation and Licensing Department.
[12.18.6.1 NMAC - N, 4/1/2004]

12.18.6.2 SCOPE: ~~Loan companies conducting title loan~~ Small Loan licensees conducting business in the state of New Mexico.
[12.18.6.2 NMAC - N, 1/1/2004]

12.18.6.3 STATUTORY AUTHORITY: Section 58-15-10 NMSA 1978.
[12.18.6.3 NMAC - N, 1/1/2004]

12.18.6.4 DURATION: Permanent.
[12.18.7.4 NMAC - Rp, 12.18.7.4 NMAC, N, 1/1/2004]

12.18.6.5 EFFECTIVE DATE: January 1, 2004, unless a later date is cited at the end of a section.
[12.18.6.4 NMAC - N, 1/1/2004]

12.18.6.6 OBJECTIVE: The objective of this part is to require a small loan licensee ~~that issues title loans to file an annual report on specific loan products sold, certain lending practices, and fees the licensee charges to borrowers~~ with the financial institutions division for data collection purposes.
[12.18.6.6 NMAC - N, 1/1/2004]

12.18.6.7 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. "Holiday loan" ~~A holiday loan is not a refund anticipation loan.~~ A holiday loan is made in advance of the tax return season, often based on an estimate of a borrowers tax refund. However, because a holiday loan is extended prior to the end of the calendar year, it is based only on an estimate of how much income a borrower will have earned by the end of the year. Because a borrower has not yet filed their taxes, a holiday loan is not secured by the borrower's tax refund.

~~B.C.~~ "Director" means the director of the financial institutions division of the regulation and licensing department.

~~C. D.~~ "Division" means the financial institutions division of the regulation and licensing department.
[12.18.6.7 NMAC - N, 4/1/2004]

12.18.6.8 ANNUAL DATA REPORT FOR ~~TITLE~~ SMALL LOAN COMPANIES: Beginning with the annual report required to be filed with the division on or before March 31, ~~2019~~ 2005 under Section 58-15-10 NMSA 1978, small loan licensees shall include in the annual report information pertaining to each type of title loans they made during the preceding calendar year in a form prescribed by the director, including but not limited to the number of loans of each product; the total dollar amount of principal for each loan product issued; the total dollar amount of fees for each loan product issued; the average cost of fees charged to a borrower, segregated by each loan product issued; the number of loans renewed, refinanced, or extended prior to being repaid in full. The director shall prescribe additional reporting requirements pursuant to the director's authority to do so under the NMSA 58-15-11.
[12.18.6.8 NMAC - N, 4/1/2004]

12.18.6.9 HISTORY OF 12.18.6 NMAC: [RESERVED]

Comment [LC13]: We recommend inserting a definition of holiday loan to eliminate the confusion between holiday loans and refund anticipation loans and clarify the distinction between the two products

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

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, XX/XX/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, XX/XX/2018]

12.18.7.3 STATUTORY AUTHORITY: Section 58-15-11 NMSA 1978.

[12.18.7.3 NMAC - Rp, 12.18.7.3 NMAC, XX/XX/2018]

12.18.7.4 DURATION: Permanent.

[12.18.7.4 NMAC - Rp, 12.18.7.4 NMAC, XX/XX/2018]

12.18.7.5 EFFECTIVE DATE: Month day, 2018, unless a later date is cited at the end of a section.

[12.18.7.5 NMAC - Rp, 12.18.7.5 NMAC, XX/XX/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, XX/XX/2018]

12.18.7.7 DEFINITIONS: ~~{RESERVED}~~

A. The term "debit authorizations" includes debit authorizations and draft authorizations.

[12.18.7.7 NMAC - Rp, 12.18.7.7 NMAC, XX/XX/2018]

12.18.7.8 EXEMPTIONS: If the borrower, or the person acting for the benefit of the borrower, chooses to provide a wage assignment, or a debit or draft authorization, such authorization may be revoked at any time upon the written request of the person providing the authorization. If the borrower, or the person acting for the benefit of the borrower, has provided one or more postdated checks, any such checks that have not been deposited shall be returned upon the written request of the person providing such checks.

12.18.7.9 PROHIBITED ACTS:

A. A licensee shall not deposit a post dated check before the date state on the face of the check.

B. Early Repayment

12.18.7.10 HOLIDAY LOAN: ~~A holiday loan is not a refund anticipation loan.~~ A holiday loan is made in advance of the tax return season, often based on an estimate of a borrowers tax refund. However, because a holiday loan is extended prior to the end of the calendar year, it is based only on an estimate of how much income a borrower will have earned by the end of the year. Because a borrower has not yet filed their taxes, a holiday loan is not secured by the borrower's tax refund.

Comment [LC14]: We recommend inserting a definition of holiday loan here as well as to eliminate the confusion between holiday loans and refund anticipation loans and clarify the distinction between the two products, consistent with the position the FID has taken in reporting requirements for these two loan products.

12.18.7.11 DEFINING WHAT IT MEANS TO MAKE A LOAN

A. "Loan Modification" means any change to the terms of an existing loan agreement by the same lender, including but not limited to, to the principal amount financed, the APR, finance charge, fees and payment schedule. Any such changes to the terms of an existing loan agreement shall constitute a new loan under both the New Mexico Small Loan Act of 1955 and New Mexico Bank Installment Loan Act 1959 and should require new Truth in Lending Act disclosure.

Comment [LC15]: If an existing loan renewed or modified, that transaction constitutes the a new loan contract. We're concerned without immediate clarification around the definitions of these terms in regulation, outstanding loans made prior to 2018 will continue to be rolled over without regard for the interest rate and repayment requirements of H.B. 347

Formatted: List Paragraph, Indent: Left: 1"

B. "Refinance" defined by 12 CFR 1026.2(a) ("Regulation Z") occurs when an existing obligation that was subject to the New Mexico Small Loan Act of 1955 or New Mexico Bank Installment Loan Act 1959 is satisfied and replaced with a new obligation undertaken by the same borrower. A refinancing is a new transaction requiring new disclosures to the consumer. The new finance charge shall include any unearned portion of the old finance charge that is not credited to the existing obligation. A refinance shall constitute a loan modification.

C. "Renewal" occurs when a lender extends the life of a loan through a change in the payment schedule, rate, or payment amount of the original loan agreement. A renewal shall constitute a loan modification.

E. "Rollover" See "Renewal."

F. "Loan Extension" See "Renewal."

12.18.7. ~~8XX~~ 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. ~~8XX~~ NMAC - Rp, 12.18.7. ~~9XX~~ NMAC, XX/XX/2018]

12.18.7. ~~9XX~~ - 12.18.7.16 [RESERVED]

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~~ Terms and Conditions of Small Loan Agreements - ~~Small Loan Companies~~, effective XX/XX/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, XX/XX/2018]

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

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

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

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

12.18.8.7 DEFINITIONS: [RESERVED]
[12.18.8.7 NMAC - Rp, 12.18.8.7 NMAC, XX/XX/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, in person, by telephone, or via the internet, 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

Comment [LC16]: We recommend only minor revisions to this section to ensure that NMAC 12.18.8 is inclusive of all regulation loan transaction made by non-resident lenders.

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, ~~negotiating, executing, or entering into~~ 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. 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, XX/XX/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 XX/XX/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, X/XX/XXXX]

12.18.9.2 SCOPE: Loan companies conducting refund anticipation loans in the state of New Mexico.
[12.18.9.2 NMAC - N, X/XX/XXXX]

12.18.9.3 STATUTORY AUTHORITY: Section 58-15-11 NMSA 1978.
[12.18.9.3 NMAC - N, X/XX/XXXX]

12.18.9.4 DURATION: Permanent
[12.18.9.4 NMAC - N, X/XX/XXXX]

12.18.9.5 EFFECTIVE DATE: Month XX, XXXX, unless a later date is cited at the end of a section.
[12.18.9.5 NMAC - N, X/XX/XXXX]

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, X/XX/XXXX]

12.18.9.7 MANDATORY DISCLOSURE OF LOAN INFORMATION:

A. All small loan companies engaged in the business of making refund anticipation loans must provide a form to consumers that includes the following:

(1) A 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.

(2) a list of the annual percentage rate and all fees that the borrower may be charged upon entering the refund anticipation loan agreement. The APR is calculated pursuant to the estimated time that the best information reasonably available from the Internal Revenue Service indicates individuals may receive their tax refunds;

(3) the estimated time to which the consumer may receive the proceeds from their anticipated tax refund or tax credit based on the best information reasonably available;

(4) the following statement in bold letters: **"You may receive your tax refund in as little as 8 to 21 days without getting a loan or paying extra fees. You are not required to take out a refund anticipation loan or refund anticipation check to receive your tax return; and**

(5) the following statement in at least 12 point bold type:

(a) 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.

(b) 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.

(c) You are responsible for the full repayment of this refund anticipation loan and for the payment of the total interest, fees, and charges incurred.

(d) 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.

(6) The licensee shall give a copy of the form containing these disclosures to the borrower and retain a copy in the borrower's file. In addition to providing the written form to the borrower, the

Comment [LC17]: We recommend inserting the definition of refund anticipation loan included in Section 15-15-2 of the New Mexico Small Loan Act so that disclosures clearly state what the refund anticipation loan product entails

Comment [LC18]: This disclosure is important to ensure uniformity in the time frame in which tax refund anticipation loan finance charges are ca

Comment [LC19]: We emphasize the importance of requiring that the following language be included verbatim, in bold letters and 12-point font, in disclosures made to borrowers of refund anticipation loans.

licensee shall read the notice orally to the borrower in the borrower's preferred language. The form shall be written in the language in which the notice was read orally to the consumer.

[12.18.9.7 NMAC - N, X/XX/XXXX]

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

(1) directly or indirectly represent a refund anticipation loan as a refund or tax credit;
(2) require a borrower to enter into a loan agreement in order to complete a tax return;
(3) 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 for Refund Anticipation Loans;
(4) 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;

(5) withhold from a consumer, or from a dependent of a consumer, original personal identification documents; and

(6) recalculate, upon repayment of the loan, the annual percentage rate (APR) as defined by 12 CFR 226, known as "Regulation Z."

[12.18.9.8 NMAC - N, X/XX/XXXX]

12.18.9.9 BUSINESS SITE REQUIREMENTS: This above disclosure shall be a separate disclosure containing 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/>."

- 1) Annually, the New Mexico Attorney General's Office provides multilevel services to the public to ensure that consumers have safe and satisfactory interactions with businesses in New Mexico. The Office of the Attorney General does not act and cannot act as a private attorney for individual citizens. However, in some matters, if a consumer is unable to resolve a dispute with a business, the Consumer Protection Division's complaint resolution services may be available. There is no charge to the public for these services. For inquiries or complaints, the Attorney General's Office can be reached toll-free at (505) 490-4060 or by submitting a complaint via this link, <http://www.nmag.gov/consumer-complaint-instructions.aspx>."
- 2) "The Consumer Financial Protection Bureau is a U.S. government agency that helps connect consumers with financial companies to understand issues, fix errors, and get direct responses about problems. For inquiries or complaints, the Consumer Financial Protection Bureau can be reached toll-free at (855) 411-2372 or <https://www.consumerfinance.gov/complaint/getting-started/>."

[12.18.9.11 NMAC - N, X/XX/XXXX]

12.18.9.10 NOTIFICATION TO BORROWERS UPON RECEIPT OF TAX REFUND

A. Licensees must notify borrowers of the date the licensee receives the borrower's tax refund as well as the date that the tax refund states the Internal Revenue Service issued the refund.

B. If the licensee receives a refund prior to the time estimated in the initial loan contract, then the licensee must issue a refund to the borrower for the difference between the estimated finance charge on the loan contract and the finance charge calculated for the number of days the loan was actually extended, at the same interest rate originally stated on the contract.

HISTORY of 12.18.9 NMAC: [RESERVED]

Comment [LC20]: We recommend inserting an additional NMAC 12.18.9.7(A)(7) with this language. This provision ensures both that the information is conveyed in the language and manner that is most understandable to borrowers, as well as ensures that these disclosures are both meaningful and effective.

Comment [LC21]: We recommend the FID substantiate the list of entities that borrowers have the right to contact in the event they have a concern with a particular lender issuing RALs by including in the mandatory business site requirements the contact information for the New Mexico Attorney General's Office and the federal Consumer Financial Protection Bureau. Adding this contact information ensures that concerns with a particular loan are directed to the appropriate government agency and gives borrowers access to important information about these government agencies that would otherwise be very difficult to locate.

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, X/XX/XXXX]

12.18.10.2 SCOPE: All licensees conducting business in the state of New Mexico.
[12.18.10.2 NMAC - N, X/XX/XXXX]

12.18.10.3 STATUTORY AUTHORITY: Section 58-15-11 NMSA 1978.
[12.18.10.3 NMAC - N, X/XX/XXXX]

12.18.10.4 DURATION: Permanent
[12.18.10.4 NMAC - N, X/XX/XXXX]

12.18.10.5 EFFECTIVE DATE: Month XX, XXXX, unless a later date is cited at the end of a section.
[12.18.10.5 NMAC - N, X/XX/XXXX]

12.18.10.6 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.
[12.18.10.6 NMAC - N, X/XX/XXXX]

12.18.10.7 MARKETING SITE REQUIREMENTS:

A. Small loan businesses operating one or more marketing site(s) shall be responsible for 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 in a location or locations on the marketing site that will be easily accessible and visible to consumers accessing such marketing site.

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 name, 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/>."**

- 1) ~~Additional: The New Mexico Attorney General's Office provides multilevel services to the public to ensure that consumers have safe and satisfactory interactions with businesses in New Mexico. The Office of the Attorney General does not act and cannot act as a private attorney for individual citizens. However, in some matters, if a consumer is unable to resolve a dispute with a business, the Consumer Protection Division's complaint resolution services may be~~

Comment [LC22]: We emphasize the necessity of including the "Electronic Media Requirements" in regulation, as these de facto rules by which the FID has been regulation the online business and marketing of small loans constitutes "rules, regulations, or standards" that "affect persons served by the agency" as defined by Section 12-4-2(F) of the New Mexico Rules Act.

Comment [LC23]: We recommend the FID substantiate the list of entities that borrowers have the right to contact in the event they have a concern with a particular lender by including in the marketing site requirements the contact information for the New Mexico Attorney General's Office and the federal Consumer Financial Protection Bureau. Adding this contact information ensures that concerns with a particular loan are directed to the appropriate government agency and gives borrowers access to important information about these government agencies that would otherwise be very difficult to locate.

available. There is no charge to the public for these services. For inquiries or complaints, the Attorney General's Office can be reached toll-free at (505) 490-4060 or by submitting a complaint via this link, <http://www.nmag.gov/consumer-complaint-instructions.aspx>"

- 2) "The Consumer Financial Protection Bureau is a U.S. government agency that helps connect consumers with financial companies to understand issues, fix errors, and get direct responses about problems. For inquiries or complaints, the Consumer Financial Protection Bureau can be reached toll-free at (855) 411-2372 or <https://www.consumerfinance.gov/complaint/getting-started/>"

[12.18.10.7 NMAC - N, X/XX/XXXX]

12.18.10.8 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 assessable 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 name, 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/>."

- 1) ~~Available to the New Mexico~~ Attorney General's Office provides multilevel services to the public to ensure that consumers have safe and satisfactory interactions with businesses in New Mexico. The Office of the Attorney General does not act and cannot act as a private attorney for individual citizens. However, in some matters, if a consumer is unable to resolve a dispute with a business, the Consumer Protection Division's complaint resolution services may be available. There is no charge to the public for these services. For inquiries or complaints, the Attorney General's Office can be reached toll-free at (505) 490-4060 or by submitting a complaint via this link, <http://www.nmag.gov/consumer-complaint-instructions.aspx>"
- 2) "The Consumer Financial Protection Bureau is a U.S. government agency that helps connect consumers with financial companies to understand issues, fix errors, and get direct responses about problems. For inquiries or complaints, the Consumer Financial Protection Bureau can be reached toll-free at (855) 411-2372 or <https://www.consumerfinance.gov/complaint/getting-started/>"

Comment [LC24]: We recommend the FID substantiate the list of entities that borrowers have the right to contact in the event they have a concern with a particular lender by including in the marketing site requirements the contact information for the New Mexico Attorney General's Office and the federal Consumer Financial Protection Bureau. Adding this contact information ensures that concerns with a particular loan are directed to the appropriate government agency and gives borrowers access to important information about these government agencies that would otherwise be very difficult to locate.

[12.18.10.8 NMAC - N, X/XX/XXXX]

HISTORY of 12.18.10 NMAC: [RESERVED]

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 18 LOAN COMPANIES
PART 10 OPERATIONAL CONTROLS AND RISK MANAGEMENT PROCEDURES

Comment [LC25]:

As stated above with regards to the definition of a rule under the State Rules Act 12-4-2(F) a "rule" includes rules, regulations or standard that affect person served by the agency.

The Division has posted on their website the "Operational Controls and Risk Management Procedures," a document described as follows: *"All licensees under the New Mexico Small Loan Act of 1955 must demonstrate appropriate financial responsibility, character and general fitness as to command the confidence of the public and warrant belief that the business will be operate lawfully, honestly, fairly and efficiently. The operational Controls and Risk Management Recommendations listed herein are designed to assist applicants and licensees in their continuing efforts to meet these goals."*

These operational controls and risk management procedures establish standards to which licensee must conform in order to demonstrate the appropriate financial responsibility, character and general fitness required by the Small Loan Act. This document clarifies the requirements for licensure to all entities seeking to issue small loans in New Mexico, therefore, it should legally be promulgated in regulation, rather than a de facto rule posted on the Division's website.

NAVAJO NATION

RCS# 947

Naa'bik'iyati Committee

6/28/2018

08:54:40 PM

Amd# to Amd#
MOT Witherspoon
SEC Tsosie
Legislation 0185-18:
Recommending that the State of
New Mexico Mandate that all
Small Loan Businesses Disclose..

PASSED

Yea : 11

Nay : 0

Excused : 0

Not Voting : 13

Yea : 11

Begay, K
Begay, S
Filfred

Hale
Perry
Phelps

Slim
Smith
Tso

Tsosie
Witherspoon

Nay : 0

Excused : 0

Not Voting : 13

Bates
Begay, NM
BeGaye, N
Bennett

Brown
Chee
Crotty

Damon
Daniels
Jack

Pete
Shepherd
Yazzie