

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 ~~[40]~~ 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 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 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 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.

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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]

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.

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

(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 [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 hearings. 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 1955.

~~[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 87505~~[4]~~. 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, 4/1/2004]

12.18.6.3 STATUTORY AUTHORITY: Section 58-15-10 NMSA 1978.
[12.18.6.3 NMAC - N, 4/1/2004]

12.18.6.4 DURATION: Permanent.
[12.18.7.4 NMAC - Rp, 12.18.7.4 NMAC, N, 4/1/2004]

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, 4/1/2004]

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, 4/1/2004]

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.

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

~~**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]

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

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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 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” 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) "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 [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.