

The NM Financial Institution Division Must Enact Regulations to Enforce the Small Loans Act

2017 Amendments to the Small Loans Act

Reforms to the Small Loan Act that were passed by the 2017 Legislature are now in effect, capping interest rates at 175% APR and eliminating traditional short term payday and title loans. The new law requires lenders to provide clear information about the costs of loans, allow borrowers to develop a credit history when they make payments on small-dollar loans, and sets minimum contract terms for small loans including at least four payments and 120 days to pay off most loans. Refund anticipation loans are exempt from those requirements.

FID's Proposed Regulations Leave Gaps in Enforcement

The Financial Institutions Division (FID) has a statutory duty to enforce the Small Loans Act and issues licenses to qualified lenders. Even though the law went into effect in January 2018, FID has not implemented regulations establishing a new regulatory process. New regulations were proposed in late February 2018 but have not been finalized. The proposed regulations eliminate inconsistencies between the new law and the old payday lending regulations, but without changes leave large gaps in enforcement.

FID must include the following protection in final regulations to enforce HB 347:

- ***Language Access:*** All borrowers should be provided uniform and meaningful disclosures in the language they speak.
- ***Eliminate "Renewal" Loopholes:*** We need clarity around what it means to make a new loan, in order to stop lenders from getting around the law by renewing or refinancing old loans.
- ***Effective Reporting Requirements:*** The FID needs lenders to report comprehensive information about their lending practices in order to effectively regulate the industry.
- ***Disclosing Costs for Refund Anticipation Loans (RALs):*** Because RALs are secured by a tax refund, the length of the loan (and costs) depend on how fast it takes the IRS to issue a refund. This means that if your return comes in sooner or even later than expected, a 175% APR listed on your contract can end up simply being false, in flagrant violation of our rate cap. The FID must establish a standard time period to calculate costs of RALs, so consumers can make an informed decision.

Key Information Legislators Should Request from FID to Understand the Impact of HB 347

Data on the Lending Industry in New Mexico

- What kind of data are storefront lenders currently reporting to the FID about the number, rates, and terms of their loans?
- How many lenders left the state in 2018?

How is FID addressing consumer complaints?

- What is FID's process for addressing consumer complaints about small loan lenders and tax preparers?

How is FID enforcing the law?

- Every licensee is required to renew their license to make loans annually. How does FID review a licensee to determine if a licensee's loan policies comply with NM law and regulations?
- Since the passage of the new law, have there been any changes made to FID's annual examination process?
- In its examination process, how does FID define "new loan" for purposes of the Small Loan Act and Bank Installment Loan Act reforms effective January 2018?
- What documents are produced by each licensee for its annual examination? Does FID conduct both onsite examinations as well as conduct document and contract reviews?
- How many licensees underwent loan policy review in 2017? 2016?

How is FID monitoring loan renewals and collection practices?

- If a borrower took out a loan in 2017 and the loan is refinanced in 2018, do you agree that the 175% APR limitation should apply?
- If a borrower took out a loan in 2017 and the loan term is extended in 2018, do you agree that the 175% APR limitation should apply?
- According to FID, "Loan policies" review of refinancing policies and procedures. How is this information reviewed? Has the FID ever cited a licensee for refinance policies that violated NM law?
- How does FID review a licensee to determine if a licensee's collection policies and practices comply with NM law? What documents are reviewed?