

NOTICE OF PUBLIC HEARING AND PROPOSED RULEMAKING

The Financial Institutions Division of the Regulation And Licensing Department Hereby Gives Notice of Public Hearing to Consider Proposed Amendments To **12.18.3 NMAC – MANDATORY BROCHURE FOR SMALL BUSINESS LOANS, 12.18.4 NMAC – MANDATORY SIGNAGE FOR ALL SMALL LOAN COMPANIES, 12.18.10.7 NMAC – DEFINITIONS, 12.18.8 NMAC – LICENSING OF NONRESIDENT LENDERS, 12.18.9 NMAC – REFUND ANTICIPATION LOANS, and 12.18.10 NMAC – ELECTRONIC MEDIA REQUIREMENTS.**

The Financial Institutions Division of the Regulation and Licensing Department (“Division”) will hold a public hearing on beginning at 10:00 am on Friday, January 13, 2023, and continuing on subsequent days, as necessary, in person at 2550 Cerrillos Road, Santa Fe, NM 87505 and via the WebEx video conferencing platform. The purpose of the hearing is to provide all interested persons a reasonable opportunity to submit data, views or arguments orally or in writing on the proposed amendments to Title 12, Chapter 18 – Loan Companies. The Division, at its sole discretion, may determine whether to hold more than one hearing.

Information for attending the virtual hearing via the WebEx conferencing platform will be available on the Division’s website <https://www.rld.nm.gov/financial-institutions/about-us/statutes-rules-guidance-actions-and-hearings/>, at least 30 days prior to the hearing and is as follows:

Meeting link: <https://nmrld.webex.com/nmrld/j.php?MTID=m7ae1093043a381f88118707870e2d35b>

Meeting number: 2490 959 8151

Meeting password: 3trZVYyXz24 (38798999 from video systems)

To join by phone: +1-415-655-0002 (United States Toll)

Access code: 24909598151##

Join from a video system or application: Dial [24909598151@nmrld.webex.com](tel:24909598151@nmrld.webex.com)

You can also dial 173.243.2.68 and enter your meeting number.

Join using Microsoft Lync or Microsoft Skype for Business: Dial [24909598151.nmrld@lync.webex.com](tel:24909598151.nmrld@lync.webex.com)

The proposed amendments to Title 12, Chapter 18 – Loan Companies, are available on the Division’s website, at www.rld.nm.gov/. The proposed amendments may also be obtained electronically by contacting Farrah D. Diaz, the Division’s Legal Clerk, at Farrah.Diaz@rld.nm.gov or (505) 690-7450.

The hearing will be conducted in accordance with the New Mexico Bank Installment Loan Act of 1959, NMSA 1978, Sections 58-7-1 to -11 (1959, as amended through 2020), the New Mexico Small Loan Act of 1955, NMSA 1978, Sections 58-15-1 to -42 (1953, as amended through 2020), and the Default Procedural Rule for Rule Making 1.24.25 NMAC.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce relevant exhibits and to examine witnesses testifying at the public hearing.

Persons desiring to present technical testimony at the hearing must file with the Division a written notice of intent. The notice of intent to present technical testimony shall:

1. Identify the person or entity for whom the witness(es) will testify;
2. State whether the person filing the statement supports or opposes the Petition;
3. Identify each witness, including name, address, affiliation(s), and educational and work background;
4. Estimate the length of the direct testimony of each witness;
5. Identify all exhibits which are part of the Record Proper and, for exhibits not part of the Record Proper, attach a copy;
6. List or make available all technical materials relied upon by each witness in making statement of technical of fact or opinion contained in his or her direct testimony; and

7. Attach a summary of the testimony of each witness, stating any opinion(s) to be offered by such witness, and an explanation of the basis for such opinion(s).

Please provide submit any notices of intent to present technical testimony to the Division's Legal Clerk, Farrah D. Diaz, as soon as possible. Any member of the general public may present non-technical public comment at the hearing or submit a non-technical written statement in lieu of oral testimony before or at the hearing.

All documents filed in this matter, including notices of intent, must be filed electronically via email to the Division's Legal Clerk, at Farrah D. Diaz, as Farrah.Diaz@rld.nm.gov.

Any individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing should contact Farrah D. Diaz, Legal Clerk for the Division, at Farrah.Diaz@rld.nm.gov or (505) 690-7450, at least 14 days prior to the hearing. TDD or TTY users please access the number via the New Mexico Relay Network, 1-800-659-1779 (voice); TTY users: 1-800-659-8331).

This is an amendment to 12.18.3 NMAC, Section 8, effective xx/xx/xxxx.

12.18.3.8 MANDATORY BROCHURE FOR SMALL LOAN 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. Using lettering no smaller than 24-point font, the front of the brochure shall have in bold capital letters, the words, "IMPORTANT CONSUMER INFORMATION" followed by the words in bold 14-point font, "This brochure contains some common terms and definitions, which are intended to help you better understand your credit transaction. Credit costs money, so it is important that you fully understand the terms of your credit transaction. If you come across terms you do not understand, look up the terms, or ask our personnel to explain the terms to you. Ask questions. Make certain the questions that you ask are answered. Make certain you understand the terms and costs of your loan."

D. Using lettering no smaller than 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. APR is a combination of the interest rate plus the fees charged on your loan. APR is higher than the interest rate because it includes both fees and interest as finance charges. The calculation of APR is mandated pursuant to Federal Law (12 CFR Part 1026 – Truth in Lending (“TIL-APR”)). 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, an additional type of annual percentage rate (“NM-APR”) must be disclosed, which may include additional charges that are not included in the TIL-APR. The NM-APR for a loan in an amount of more than \$500 and up to \$~~5,000~~10,000 [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~~thirty-six percent, effective January 1, ~~2018~~2023. The NM-APR for a loan in an amount of \$500 or less made pursuant to the Small Loan Act of 1955 or the Bank Installment Loan Act of 1959 cannot exceed thirty-six percent plus a fee that shall not

exceed five percent of the total principal of the loan and shall not be imposed on any borrower more than once per twelve-month period, effective January 1, 2023.

- (5) Finance Charge. The dollar amount the credit will cost you. Finance charges include interest, and may also include transaction fees and service fees.
- (6) Principal. The amount of money owed on a debt, on which interest is calculated.
- (7) Interest. The cost of borrowing money, generally a percentage of the amount owed.
- (8) Balance. The total amount of money owed to a lender.
- (9) Default. Failure to pay a debt as agreed to on a contract. When a loan is in default, the lender may demand full payment of the remaining debt.
- (10) Collateral. Security pledged by a borrower to protect the interests of the lender; in case of default, the lender may take ownership of the security, if any, pledged by the borrower.
- (11) Credit Bureau. A private company that keeps a record of your credit history for distribution upon request by authorized parties. When you apply for credit, a lender may request a credit report to review when considering your application.
- (12) Credit History. A record containing information about you, including your payment history on previous debts.
- (13) Credit Report. A report of the credit history and other information about you that is kept by credit bureaus, which may include: your name, address, social security number, payment history (good and bad), current and previous debts, employers, income, etc. Accurate information on a credit report may not be legally removed. Incorrect information may be removed by disputing the information to the credit bureau involved.

E. The brochure shall have the following words, using lettering no smaller than 12-point font: "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: [~~www.rld.state.nm.us/financialinstitutions/~~ www.rld.nm.gov/financial-institutions/." [12.18.3.8 NMAC - N, 10/1/2001; A, 08/13/2004; A, 09/15/2018; A, **/**/****]

This is an amendment to 12.18.4 NMAC, Section 8, effective xx/xx/xxxx.

12.18.4.8 MANDATORY SIGNAGE FOR ALL SMALL LOAN COMPANIES:

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

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

C. The sign must state in bold capital letters, the words, "LOAN RATES AND FEES."

D. Below the words "loan rates and fees," in bold capital letters, the sign shall state, "BELOW IS GENERAL INFORMATION REGARDING ALL RATES AND FEES THAT WILL ASSIST YOU IN MAKING YOUR LOAN DECISION. IF YOU HAVE ANY QUESTIONS, OR WOULD LIKE MORE INFORMATION, PLEASE ASK. MAKE CERTAIN THE QUESTIONS THAT YOU ASK ARE ANSWERED. MAKE CERTAIN YOU UNDERSTAND THE TERMS AND COSTS OF YOUR LOAN."

E. The disclosure shall consist of two distinctive sections. Each section heading must be printed from left to right. The borders for the two section headings must be more prominent than the others.

(1) The first heading shall have in bold capital letters the words, "ANNUAL PERCENTAGE RATE (APR)" followed by the words in bold font, "The cost of your credit as a yearly rate. APR is a combination of the interest rate plus the fees charged on your loan. APR is higher than the interest rate because it includes both fees and interest as finance charges."

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

(b) Below the preceding sentences in bold type the following words shall appear: "Under New Mexico law, the APR for a loan in an amount of \$[~~5,000~~]10,000 or less made pursuant to the Small Loan Act of 1955 or the Bank Installment Loan Act of 1959 cannot exceed [~~one hundred and seventy five~~]thirty-six percent, effective January 1, [~~2018~~]2023."

(2) The second heading shall have in bold capital letters the words, "FEES" followed by the words: "A list of all fees that you may be charged." The heading shall be followed with a table containing a list of all fees that a borrower may be charged.

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

G. The bottom of the sign shall have 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 number (505) 476-4885 or visit the website[~~http://www.state.nm.us/financialinstitutions/~~ www.rld.nm.gov/financial-institutions/]."

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

This is an amendment to 12.18.8 NMAC, Section 8, effective xx/xx/xxxx.

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~~]10,000 or less have been delivered to a New Mexico resident borrower by mail within New Mexico or have been otherwise made available to a New Mexico resident borrower within New Mexico, by a lender who solicited such small loan by mail or otherwise and the solicitation is received by a New Mexico resident in New Mexico, the loan is considered to have been made in New Mexico for the purposes of the New Mexico Small Loan Act of 1955, and both the lender and the loan are thereby subject to the provisions contained in said act. Any person making small loans under such circumstances is deemed to be engaging in the business of lending, as that term is used in Section 58-15-3 NMSA 1978, and the person must first have obtained a license from the director under the provisions of the New Mexico Small Loan Act of 1955 and this regulation if the person contracts for, exacts or receives, directly or indirectly on or in connection with the loan, charges, whether for interest, compensation, consideration or expense, which in the aggregate are greater than the maximum as provided by the applicable laws of New Mexico.

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

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

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

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

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

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

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

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

[12.18.8.8 NMAC - Rp, 12.18.8.8 NMAC, 09/15/2018; A, **/**/****]

This is an amendment to 12.18.9 NMAC, Section 8, effective xx/xx/xxxx.

12.18.9.8 MANDATORY DISCLOSURE OF LOAN INFORMATION:

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

A. a statement that "refund anticipation loan" means a loan that is secured by or that the creditor arranges or expects to be repaid, directly or indirectly, from the proceeds of the consumer's federal or state personal income tax refunds or tax credits, including any sale, assignment or purchase of a tax refund or tax credit at a discount or for a fee;

B. a list of the annual percentage rate and all fees that the borrower may be charged upon entering the refund anticipation loan agreement;

C. the estimated time to which the consumer may receive the proceeds from their anticipated tax refund or tax credit; and

D. the following statement in at least 12-point bold type:

(1) This agreement is considered to be a loan and not your actual tax refund or tax credit. You are borrowing money against your anticipated tax return.

(2) Neither the internal revenue service (IRS) nor the New Mexico taxation and revenue department guarantees that you be paid the full anticipated amount of a tax refund or tax credit, nor do they guarantee that a tax refund or tax credit will be deposited into your bank account or mailed on a specific date.

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

(4) Prior to executing a refund anticipation loan agreement, a small loan licensee shall require the borrower to provide a hand written or electronic signature acknowledging that the borrower understands the all required disclosures and has received a copy of the required disclosure. A copy of the acknowledgment form must be permanently kept with the loan records.

(5) This business is licensed and regulated by the New Mexico Regulation and Licensing Department, Financial Institutions Division, P.O. Box 25101, 2550 Cerrillos Road, Santa Fe, New Mexico 87504. To report any unresolved problems or complaints, contact the division by telephone at (505) 476-4885 or visit the website: [~~www.rld.state.nm.us/financial_institutions/~~] www.rld.nm.gov/financial-institutions/.”

[12.18.9.8 NMAC - N, 09/15/2018; A, **/**/****]

This is an amendment to 12.18.10 NMAC, Section 7, effective xx/xx/xxxx.

12.18.10.7 DEFINITIONS:

A. "Business of Lending" means any person or business entity engaged in the origination of any extension of credit in the amount of \$~~5,000.00~~10,000 or less, or the acceptance of a credit application containing a consumer's personal information beyond the below listed items:

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

B. "Marketing Site" means any website, social media page, or mobile application utilized only for marketing, advertising, or referring a consumer to complete a credit application and which is not utilized by a small loan business for the business of lending.

C. "Business Site" means any website, social media page, or mobile application which a small loan business utilizes to engage in the business of lending through such site.

[12.18.10.7 NMAC - N, 09/15/2018; A, **/**/****]

This is an amendment to 12.18.10 NMAC, Section 8, effective xx/xx/xxxx.

12.18.10.8 MARKETING SITE REQUIREMENTS:

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

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

C. The above shall also contain a separate disclosure stating the following words, "This lender is licensed and regulated by the New Mexico Regulation and Licensing Department, Financial Institutions Division, P.O. Box 25101, 2550 Cerrillos Road, Santa Fe, New Mexico 87504. To report any unresolved problems or complaints, contact the division by telephone at (505) 476-4885 or visit the website

[~~http://www.rld.state.nm.us/financialinstitutions/~~ www.rld.nm.gov/financial-institutions/."

[12.18.10.8 NMAC - N, 09/15/2018; A, **/**/****]

This is an amendment to 12.18.10 NMAC, Section 9, effective xx/xx/xxxx.

12.18.10.9 BUSINESS SITE REQUIREMENTS:

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

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

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

D. All small loan businesses operating one or more business site(s) shall provide a disclosure in an easily accessible and visible location the following words "TO REPORT A PROBLEM OR COMPLAINT WITH THIS

LENDER, YOU MAY WRITE OR CALL _____." The blank shall be filled in with a position title, address, phone number, and email address of the company's problem resolution person.

E. The above shall also contain a separate disclosure stating the following words: "This lender is licensed and regulated by the New Mexico Regulation and Licensing Department, Financial Institutions Division, P.O. Box 25101, 2550 Cerrillos Road, Santa Fe, New Mexico 87504. To report any unresolved problems or complaints, contact the Division by telephone at (505) 476-4885 or visit the website

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[12.18.10.9 NMAC - N, 09/15/2018, **A**, **/**/****]