

NMAC**Transmittal Form**

Volume: Issue: Publication date: Number of pages: (ALD Use Only) Sequence No.

Issuing agency name and address:

Agency DFA code:

Contact person's name:

Phone number:

E-mail address:

Type of rule action:

(ALD Use) Recent filing date:

New ☒ Amendment ☐ Repeal ☐ Emergency ☐ Renumber ☐

Title number:

Title name:

Chapter number:

Chapter name:

Part number:

Part name:

Amendment description (If filing an amendment):

Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference?

Please list attachments or Internet sites if applicable.

Yes ☐ No ☒

If materials are attached, has copyright permission been received?

Yes

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No

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Public domain

☐**Specific statutory or other authority authorizing rulemaking:**

The Director of the Financial Institution Division (FID) of the Regulation and licensing department is authorized "to make reasonable regulations and orders for the administration and enforcement of the New Mexico Small Loan Act of 1955." NMSA 1978, § 58-15-11 (2007). Further, the Director of FID is authorized to issue "interpretive regulations to effectuate the purposes of the New Mexico Bank Installment Loan Act of 1959." NMSA 1978, § 58-7-9(E) (2023).

Notice date(s):

Hearing date(s):

Rule adoption date:

Rule effective date:

Concise Explanatory Statement For Rulemaking Adoption:

Findings required for rulemaking adoption:

Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

The addition of Part 11 to 12.18 NMAC is required as a result of the legislature's adoption of House Bill 132 (HB 132) during the 2022 session. HB 132 enacted changes affecting all small loans. Specifically, HB 132 mandated the small loan ceiling to \$10,000, adds the disclosure of the NM-APR, and caps the allowable NM-APR at thirty-six percent. Further, HB 132 requires small loan companies to disclose the NM-APR. However, NM-APR is a divergence from the universal APR calculation of all 49 states and US Territories. The calculation of NM-APR is further complicated because of the NM-APR will fluctuate as a result of consumer driven behavior fees after the closing of the loan.

The addition of Part 11 is a direct result of the public comments received by the Financial Institutions Division (FID) during the public comment period. The vast majority of public comments sought additional information and clarity regarding the calculation of the NM-APR with regard to consumer driven behavior fees after the closing of the loan. Therefore, the FID has been compelled to draft a complicated and novel set of definitions to assist small loan companies to calculate the NM-APR. Topically, the calculation and disclosure of NM-APR does not fit under any current part of 12.18 NMAC, therefore, the FID created Part 11.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

Mark D. Sadowski

Check if authority has been delegated

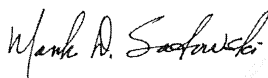
☐

Title:

Director of the Financial Institutions Division

Signature: (BLACK ink only OR Digital Signature)

Date signed:



Digitally signed by Mark
Sadowski
Date: 2023.03.01 14:50:23 -07'00'

03/01/2023

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 18 LOAN COMPANIES
PART 11 NEW MEXICO ANNUAL PERCENTAGE RATE CALCULATION

12.18.11.1 ISSUING AGENCY: Financial Institutions Division of the Regulation and Licensing Department.
[12.18.11.1 NMAC – N, 03/29/2023]

12.18.11.2 SCOPE: Small loan licensees conducting business in New Mexico.
[12.18.11.2 NMAC – N, 03/29/2023]

12.18.11.3 STATUTORY AUTHORITY: Section 58-15-11 NMSA 1978.
[12.18.11.3 NMAC – N, 03/29/2023]

12.18.11.4 DURATION: Permanent.
[12.18.11.4 NMAC – N, 03/29/2023]

12.18.11.5 EFFECTIVE DATE: March 29, 2023, unless a later date is cited at the end of a section.
[12.18.11.5 NMAC – N, 03/29/2023]

12.18.11.6 OBJECTIVE: The objective of this part is to establish regulations governing the conduct of small loan licensees.
[12.18.11.6 NMAC – N, 03/29/2023]

12.18.11.7 DEFINITIONS:

A. “Truth in Lending Annual Percentage Rate” (“TIL-APR”) means the calculation of an Annual Percentage Rate mandated pursuant to Federal Law (12 CFR Part 1026 – Truth in Lending Act). It is intended to provide a single value for a consumer to compare the cost of credit between one lender and another.

B. “New Mexico Annual Percentage Rate” (“NM-APR”) means the calculation of an Annual Percentage Rate pursuant to New Mexico law (Section 58-7-7 NMSA 1978 and Section 58-15-17 NMSA 1978), which may include charges that are either excluded or may be excluded under certain conditions in the TIL-APR calculation.
[12.18.11.7 NMAC – N, 03/29/2023]

12.18.11.8 NEW MEXICO ANNUAL PERCENTAGE RATE EXCLUSIONS:

A. The following charges, based solely on a borrower’s individual behavior after the extension of credit, cannot reasonably be predicted and are therefore excluded from the calculation of the NM-APR:

(1) Actual expenditures, including reasonable attorney fees, for legal process or proceedings to collect on a loan pursuant to statutory limitation

(2) Ancillary products, such as insurance, sold after the extension of credit that are not required as a condition for extension of credit, are properly disclosed, which the customer authorizes a minimum of seven calendar days after the extension of the credit;

(3) Delinquency fee charges pursuant to statutory limitations and as properly disclosed in loan agreements;

(4) Force placed or similar collateral insurance in the event that a borrower fails to maintain in effect any collateral insurance required in connection with a loan transaction, pursuant to statutory conditions;

(5) Charges imposed by third parties in connection with credit or debit card transactions, Automated Clearing House (ACH) payments, or similar, provided that a specific method of payment by the borrower is not required as a condition of the extension of credit;

(6) Non-sufficient funds (NSF) charges for debits not honored by the drawee’s financial institutions and are subsequently reversed from the lender’s account, subject to statutory limitations;

(7) Parking or similar fees if they are charged to all individuals who utilize the parking area for which the fees are associated;

(8) Reimbursement for Global Positioning Systems (GPS) or similar devices installed on vehicles or other movable collateral when required as a condition of the extension of credit, when those devices are

removed or destroyed by the borrower without the lender's authorization and subsequently not returned in working order to the lender within 15 days of such removal;

(9) Any other charges arising solely from the borrower's behavior that are not required by the lender as a condition for the extension of credit and are not either prohibited or prohibited from exclusion by law.

B. Any amount paid to a public official in relation to the extension of credit, including fees to record or release liens.

C. For loans of five hundred dollars (\$500) or less, a fee not exceeding five percent of the total principal of the loan, provided that such fee is not imposed on any borrower more than one time per 12-month period, may be excluded from the calculation of the NM-APR.
[12.18.11.8 NMAC – N, 03/29/2023]

History of 12.18.11 NMAC: [RESERVED]