

**From:** [Michael Barrio](#)  
**To:** [Otero, Maya, RLD](#); [Mora, David, RLD](#)  
**Subject:** HB 347 Regulations  
**Date:** Friday, March 30, 2018 9:10:20 AM

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Dear Ms. Otero & Mr. Mora -

Storefront lending in New Mexico has been largely unregulated and hardworking families have been forced to borrow at interest rates that force them into cycles of high-cost debt that can be impossible to recover from. The implementation and enforcement of HB 347 through regulation and compliance examinations by the FID aims to finally give New Mexicans a chance to more fully participate in our state's economy. Coupled with high interest rates, hidden fees and unaffordable payments, predatory loans prevent New Mexican families from building assets and creating savings for stable and sustainable financial futures. Unscrupulous lending practices only serve to trap people, rather than liberate them from cycles of poverty and debt, and enforcing regulation and compliance is a critical first step in working to protect our families, allowing them to participate more fully in the local economy. The first round of proposed regulations from the NM FID signal progress for fair loan terms and a more inclusive economy for all New Mexicans by eliminating short term payday loans and enacting the first statutory rate cap on installment loans. However, there are important areas of the proposed regulations that must be addressed in order to achieve the work HB 347 is designed to do.

Importantly, a clear definition for what constitutes "loan modification" is necessary to close potential loopholes that could create de facto exemptions from the 175% interest cap rate. Currently, the FID's proposed regulations don't address the definition of loan modifications – the terms "renewal," "new loan," "refinance," and "loan modification" have not previously been addressed in FID regulations and this should be addressed in the proposed regulations. Further, disclosures of fees must be clear, accessible, and straightforward so that borrowers can understand the fees they can legally be charged in connection to loans. Additionally, disclosures and regulations enacted pursuant to BILA and SLA should be made available in English, Spanish, Navajo, and Vietnamese – languages that are more reflective of the communities that utilize installment loans. Without clear disclosures of this information and consumer rights, loans aren't transparent and borrowers can't fully understand the terms of their loans.

And, in order to effectively regulate the small loan industry and curtail predatory lending, it is necessary that FID require in its proposed regulations meaningful loan data reporting beyond the statutory minimum requirements. Without such data, regulating the industry and identifying bad actors becomes almost impossible for regulators to enforce intended consumer protections, or for the industry or the public to discern total costs the small loan industry charges for various products each year.

We look forward to seeing more robust regulations that would define what it means to make a loan, improve disclosures and language regarding loans and renewals, address data collection and utilization issues, and an opt-out provision for credit reporting. While we are pleased at the progress being made combatting predatory lending in New Mexico, we know that we can do better, and that there is more work to be done in refining these regulations so that all of New Mexico can truly have a chance to achieve stable and sustainable financial futures. Thank you.

Michael Barrio  
Director of Advocacy  
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“There are lots of things that can remove barriers and create pathways, that don’t cost anything.” — *Ona Porter, Prosperity Works*



**From:** [Donna M Christensen](#)  
**To:** [Otero, Maya, RLD](#)  
**Subject:** Pay Day Loan legislation  
**Date:** Monday, April 2, 2018 10:48:00 PM

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I completely support efforts to strengthen Pat Day Loan laws in NM. I am a Navajo Indian. Many of my relatives have been involved in obtaining outrageous loans from payday loan company. After snagged at the first loan, they are forced to pay out rages fees and it becomes after snag at the first loan, they are forced to pay out rages fees and it rapidly becomes impossible for them to get to the point they could ever pay off alone. Each has been profoundly affected negatively for the rest of their lives. Frankly, I think all those businesses should be shut down . Outrageous!!!

Sent from my iPhone

## Mora, David, RLD

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**From:** Lindsay Cutler <lindsay@nmpoertylaw.org>  
**Sent:** Monday, April 2, 2018 3:10 PM  
**To:** Otero, Maya, RLD; Mora, David, RLD  
**Cc:** Christopher Sanchez  
**Subject:** Comments on Proposed FID Regulation  
**Attachments:** NMCLP Comments-Proposed FID Regulations-2018-04-02.pdf; NMCLP Track Changes-Proposed FID Regulations-2018-04-02.pdf

Hello Mr. Mora and Ms. Otero,

Please find the New Mexico Center on Law and Poverty's comments on the proposed FID regulations for small loans, attached.

Sincerely,  
Lindsay Cutler

Lindsay Cutler  
Staff Attorney  
NM Center on Law and Poverty  
Phone: (505)255-2840  
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[lindsay@nmpoertylaw.org](mailto:lindsay@nmpoertylaw.org)



Join the fight against poverty and injustice in New Mexico! [Donate to the Center today.](#)

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Exhibit 20



April 2, 2018

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

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

Dear Mr. Graham,

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

**I. 12.18.3 Mandatory Brochure for Small Loan Businesses**

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

Subsection (D)(5) “Finance Charge” should be amended to include the definition of finance charge according to 12 CFR Part 1026.4(b)<sup>1</sup> and should state what costs a borrower may see included in the finance charge on small loans made pursuant to New Mexico law. According to the New Mexico Bank Installment Loan Act<sup>2</sup>, the total finance charge “consists solely of interest and a fully earned processing fee not to exceed the lesser of two hundred dollars (\$200) or ten percent of the principal.” This disclosure should be made clear in the brochure, as well as on all marketing and business websites, and in-store on all schedules of charges.

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

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

<sup>1</sup> N.M. STAT. ANN. 58-15-17(J) (2017).

<sup>2</sup> N.M. STAT. ANN. 58-7-6 (2017).

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

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

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

## **II. 12.18.4 Mandatory Signage for All Small Loan Companies**

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

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

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

### **a. Uniformity of Disclosures**

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

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

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

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

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

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

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

### **IV. 12.18.7 Hearing Procedures for Small Loan Companies**

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

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

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

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

#### **a. Holiday Loans**

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

#### **b. Defining What It Means to Make a Loan**

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

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

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<sup>3</sup> N.M. STAT. ANN. 58-15-11(2017).

<sup>4</sup> 12 CFR Part 1041.

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

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

Please see attachment regarding our recommendations for this Part.

#### **V. 12.18.8 Licensing of Non-Resident Lenders**

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

#### **VI. 12.18.9 Refund Anticipation Loans**

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

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

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

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

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

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<sup>6</sup> 12 CFR Part 1041.

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

estimates and disclosures are calculated.” This requirement is consistent with the Truth in Lending Act’s requirements for the use of estimates in disclosures.<sup>8</sup>

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

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

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

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

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

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<sup>8</sup> 12 CFR Part 1026.17(c) (“Regulation Z”).

## **VII. Language Access**

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

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

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

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

## **VIII. Opt-Out Provision for Credit Reporting**

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

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

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

<sup>10</sup> N.M. STAT. ANN. §57-12-2 (2017).

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

**IX. 12.18.10 Electronic Media Requirements**

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

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

**X. Operational Controls and Risk Management Procedures**

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

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

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

Sincerely,

/s/

New Mexico Center on Law and Poverty

Navajo Nation Human Rights Commission

Native American Voters Alliance

Working Families

Miquela Anaya

Jack Hiatt

Nathalie Martin

## 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 2<sup>nd</sup> 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/](http://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><a href="#">12.18.2 NMAC- Lenders' Exchange</a></u>	<u><a href="#">12.18.3 NMAC- Mandatory Brochure for Small Loan Business (Amendment)</a></u>
<u><a href="#">12.18.3 NMAC- Mandatory Brochure for Small Loan Business</a></u>	<u><a href="#">12.18.4 NMAC- Mandatory Signage For All Small Loan Companies (Amendment)</a></u>
<u><a href="#">12.18.4 NMAC- Mandatory Signage for Payday Lenders and Title Loan Companies</a></u>	<u><a href="#">12.18.7 NMAC- Hearing Procedures for Small Loan Companies (Repeal and Replace)</a></u>
<u><a href="#">12.18.5 NMAC- Annual Data Report for Payday Lenders</a></u>	<u><a href="#">12.18.8 NMAC- Licensing of Non Resident Lenders (Repeal and Replace)</a></u>
<u><a href="#">12.18.6 NMAC- Annual Data Report for Title Loan Companies</a></u>	<u><a href="#">12.18.9 NMAC- Refund Anticipation Loans (New Regulation)</a></u>
<u><a href="#">12.18.7 NMAC- Terms and Conditions of Payday Loan Agreements</a></u>	<u><a href="#">12.18.10 NMAC- Electronic Media Requirements (New Regulation)</a></u>
<u><a href="#">12.18.8 NMAC- Licensing of Non Resident Lenders</a></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/](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 [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 8750[5]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.

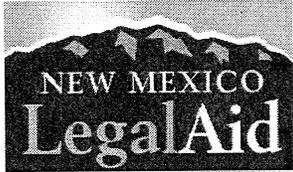
The Division has posted on their website the "Operational Controls and Risk Management Procedures," a document described as follows: *"All licensees under the New Mexico Small Loan Act of 1955 must demonstrate appropriate financial responsibility, character and general fitness as to command the confidence 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.

**From:** [Cassie M. Fleming](#)  
**To:** [Otero, Maya, RLD](#)  
**Subject:** Public Comment  
**Date:** Monday, April 2, 2018 1:56:02 PM  
**Attachments:** [Final Public Comment.pdf](#)

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Please see attached.



## New Mexico Legal Aid, Inc.

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[www.newmexicolegalaid.org](http://www.newmexicolegalaid.org)

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Financial Institutions Division

PO Box 25101

Santa Fe, NM 87504

**Attention: Public Comment**

Submitted via e-mail: [maya.otero@state.nm.us](mailto:maya.otero@state.nm.us)

April 2, 2018

To Financial Institutions Division:

New Mexico Legal Aid (NMLA) is writing regarding the proposed rule changes pursuant to § 58-15-11 NMSA 1978 to adopt requirements and correct inconsistencies to incorporate the provisions of 2017 House Bill 347 (HB 347). NMLA provides free legal advocacy, legal representation and legal education to New Mexico's low-income families. As the state's largest nonprofit provider of civil legal services, we help families to build safer, more stable and healthier futures. As such, the small loan reforms in HB 347 are of paramount importance to the clients we serve across the state.

NMLA has two major concerns with the proposed regulations in implementing HB 347: 1.) The rule's silence on the definition of making a loan and definitions of loan modifications or renewals and 2.) FID's lack of requirements for loan data reporting and collection.

### **MAJOR CONCERNS:**

- 1. The Proposed Regulations create a loophole for renewals or modifications of loans that pre-date the effective date of HB 347 by failing to define what it means to make a new loan.**

The new provisions adopted under HB 347 contain numerous restrictions using the wording "No lender shall make a loan . . ." and "No loan made shall . . ." See, e.g. § 58-15-17 (E-J). However the statute does not define "make a loan," which creates confusion about whether the extremely common practice among small lenders of "renewing" or "modifying" existing loans is subject to the new requirements. FID is in a position to define and clarify these terms to ensure that all new extensions of credit come into compliance with the statute. However, the proposed regulations in their current form omit definitions on what it means to make a

loan, thus leaving open a loophole and source of legal uncertainty. The FID has not previously addressed terms such as “renewal,” “new loan,” “refinance” and “loan modification.” The proposed regulations are also silent on these definitions. NMLA urges the FID to issue regulations that adequately address these definitions.

NMLA fears that the FID underestimates the extent of exploitation involved in loan renewals, refinancing or modifications. One of NMLA’s clients obtained a \$4,699.50 title loan in 2013. The loan required the elderly Navajo woman to pay back the loan in full in one month. With a 96 annual percentage rate, this meant that she would have had to pay the full \$5,070 in 30 short days. On a fixed income, she was unable to make that payment. The woman, however, was afraid to lose her only truck, which she pledged as collateral for the loan. She was desperate to avoid letting the loan default because her truck allowed her to travel from her home in a remote corner of McKinley County to Gallup for medical appointments. For the next 4 years – when she was unable to pay the entire amount due each month – the title loan company renewed the woman’s loan every 30 days, taking from her whatever payment she had. Ultimately, this elderly woman paid more than \$22,000 to the lender.

This scenario illustrates the damage that loan renewals can do to low-income borrowers. Adoption of the proposed regulations without defining what it means to make a new loan and what constitutes a “loan modification” would potentially allow renewals of existing loans to evade the restrictions that would apply to new loans, and hinders the FID’s ability to regulate lenders.

At a minimum, FID should include in the proposed regulations a definition of what constitutes a “loan modification,” “renewal,” “refinance” and a “new loan.” Pursuant to § 58-15-21 “What constitutes a Loan of Money” and § 58-15-11 “Regulations and Orders,” FID has the statutory authority to address and define loan modifications, renewals or refinancing. In particular, under § 58-15-11, the FID is authorized to issue regulations governing the “conduct of all licensees’ operations ... (B) such regulations ... shall specifically address: (1) the cost of loans, including fees and interest rates; (2) **the terms of loans, including amount, length, renewals, rescission, payments and security**” (emphasis added).

Without definitions of loan modifications, renewals or refinancing, FID’s rules do not go far enough in adopting requirements to properly enact HB 347 and adequately protect New Mexico’s most vulnerable citizens. We urge FID to add a regulation clarifying that any modification, renewal, refinancing, or extension of a loan – including loans made prior to the effective date of HB 347 – constitutes the making of a loan and would therefore have to be in compliance with the New Mexico Small Loan Act of 1955, as amended by HB 347.

## **2. FID’s Proposed Regulations must require meaningful data collection**

NMLA is concerned that, under HB 347, many important reporting requirements for lender licensees have been eliminated. FID must fill this gap by issuing regulations that address these reporting requirements. In particular, HB 347 entirely removed the requirements that lenders report:

- the number of new customers;
- the number of loans renewed, refinanced or extended; and,
- the procedures that the licensee follows as a standard practice to establish each consumer's ability to repay a loan and reporting the amount and description of all fees charged.

The FID may underestimate the frequency with which loans are renewed, refinanced or extended. NMLA has reason to believe that lenders renew, refinance or modify loans as often as they make new loans – if not more. These loans are routinely renewed indefinitely, keeping borrowers in debt for a long time.

Even if borrowers have the money to pay off their loan, many NMLA clients report that lenders pressure them to renew their loan to borrow more money. These practices were highlighted in a 2014 New Mexico Supreme Court case. There, the Court found that the lender “aggressively pursued borrowers to get them to increase the principal on their loan.” *State ex rel. King v. B&B Inv. Grp., Inc.*, 2014-NMSC-024, ¶ 21 (“Defendants directed employees to take time every day to give every customer a ‘courtesy call []’ to ‘make them aware of the possibility of rewriting their loan ... ’”). The Court highlighted the lender’s courtesy call script:

“Your account balance as of today is \$ \_\_\_\_\_, and your credit available is \$ \_\_\_\_\_. Renewing your loan with us today Mr./Mrs. \_\_\_\_\_ would put an extra \$ \_\_\_\_\_ in your pocket which I’m sure would come in handy with back to school, last minute vacations or anything else that comes up towards the end of Summer. Would you like me to get things ready for you to come in today and take care of this?” *Id.*

The Court further noted that “[a]t least one store employee described a practice of calling customers who were one payment away from paying off their loans to encourage them to take out another loan.” *Id.*

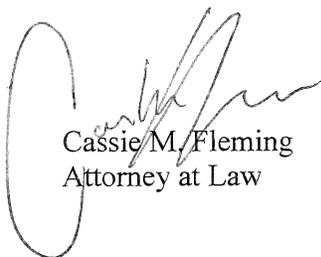
FID should require meaningful loan data reporting to better address the on-the-ground reality that a vast number of loans are renewals or loans for otherwise existing borrowers. As currently proposed, the data reporting requirements will not allow regulators, the industry or the public to understand the extent – and effects – of loan renewals. Moreover, the new reporting requirements under 58-15-10.1 are so minimal that the FID is unable to fulfill its statutory obligations under 58-15-39(B) to report annually to the legislature “data adequate to obtain an accurate understanding of the practices, demographics and legal compliance of all licensees licensed in the state.”

While NMSA 58-15-10.1 eliminated the statutory *minimum* reporting requirements for licensees, the FID can and should require additional reporting to meet its obligations under NMSA 58-15-39(B). Pursuant to NMSA 58-15-10, “Books and records; annual reports; additional information,” NMLA urges FID to add a regulation adopting the reporting requirements that HB 347 eliminated. Notably, NMLA asks that FID adopt reporting requirements – as reasonable, relevant information under NMSA 58-15-10(B) – to capture data relating to:

- the number of new customers;
- the number of loans renewed, refinanced or extended; and,
- the procedures that the licensee follows as a standard practice to establish each consumer's ability to repay a loan and reporting the amount and description of all fees charged.

NMLA thanks the FID for the opportunity to comment on these important regulations.

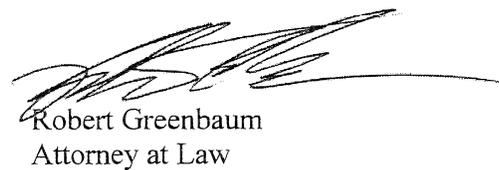
Yours sincerely,



Cassie M. Fleming  
Attorney at Law



Mari Kempton  
Attorney at Law



Robert Greenbaum  
Attorney at Law

## Mora, David, RLD

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**From:** Carlotta Bird <cpbirdsd@unm.edu>  
**Sent:** Monday, April 2, 2018 4:52 PM  
**To:** Otero, Maya, RLD  
**Cc:** Mora, David, RLD  
**Subject:** Subject: Payday loans

Hello, please regulate the Payday lenders so that those who have to take these types of loans are not preyed upon unfairly. Please do all you can to cap the percentage they are able to charge to those unfortunate enough to fall into their web, and that the consumers of these loans are told clearly up front what the loan is going to end up costing them. The predatory practices of these lenders need to be stopped.

Carlotta Penny Bird

Exhibit 22

## Fairness for people that need small loans

Attn: Mr. Christopher Moya, Acting Director  
NMRLD- Financial Institutions Division  
P.O. Box 25101  
Santa Fe, NM 87504

Dear Mr. Moya,

I am requesting that you ensure the small loan industry is properly regulated in the following ways:

1. Please define a 'loan modification'. We need to ensure that all potential loopholes are closed;
2. Make sure all fees on small loans are properly disclosed to ensure fairness to all consumers;
3. Ensure all small loan lenders are reporting comprehensive loan data to better understand the industry's impact on NM's consumers;
4. Make sure loan disclosures are available in Navajo, English, Spanish and Vietnamese.
5. Provide consumers a choice to 'opt-out' of the credit reporting, as many employers don't look favorably to those that borrow from payday industry.

Thank you,

Wesley Siquah  
Resident of Albuquerque, NM  
[romewest114@outlook.com](mailto:romewest114@outlook.com)  
(505) 323-2460

Financial Institutions Division

MAR 26 2018

## Mora, David, RLD

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**From:** Jessica Starbuck <Jessica.Starbuck@titlemax.com>  
**Sent:** Monday, April 2, 2018 4:58 PM  
**To:** Mora, David, RLD  
**Cc:** Victoria Newman  
**Subject:** RE: Small Loan Proposed Regulations  
**Attachments:** NM FID Comment Letter - Notice of Public Hearing - 04-02-18.pdf

Good evening Mr. Mora –

I wanted to forward a courtesy copy of TitleMax's comments on the proposed changes that are scheduled for hearing on 04/03/18. A copy was previously faxed to the number provided.

Please let us know if the FID has any questions or would like to discuss this matter further.

Thank you for your consideration.

Jessica Starbuck  
Legal Services and Litigation Director



15 Bull Street, Suite 200  
Savannah, GA 31401  
Direct Line: 912-721-5835  
Fax: 866-591-4638  
Email: [jessica.starbuck@titlemax.biz](mailto:jessica.starbuck@titlemax.biz)

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**From:** Mora, David, RLD [mailto:David.Mora@state.nm.us]  
**Sent:** Wednesday, March 21, 2018 3:44 PM  
**To:** Jessica Starbuck <Jessica.Starbuck@titlemax.com>  
**Subject:** Small Loan Proposed Regulations

Good afternoon Ms. Starbuck:

As per your request below is a link to the Division's website that contains a copy of the hearing notice and proposed rules.

[http://www.rld.state.nm.us/financialinstitutions/Small\\_Loan\\_Companies.aspx](http://www.rld.state.nm.us/financialinstitutions/Small_Loan_Companies.aspx)

If you have any questions or concerns, feel free to contact me.

Best regards,

**David J. Mora, CFE**  
Consumer Industry Manager  
NM Regulation & Licensing Department  
Financial Institutions Division

P.O. Box 25101  
2550 Cerrillos Rd. 3<sup>rd</sup> Floor  
Santa Fe, NM 87504

Exhibit 24

Phone: (505) 476-4569; Fax (505) 476-4670  
Email: [David.Mora@state.nm.us](mailto:David.Mora@state.nm.us)

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"NOTE: This e-mail, any attachments, and the information contained therein are confidential. The information contained in this email and/or any attachments is intended only for use by the intended recipient(s) and may contain trade secret or otherwise proprietary information of TMX Finance LLC and/or its affiliates and subsidiaries (collectively, "TitleMax"). If you are not the intended recipient of this e-mail, any use, dissemination, distribution or copying of this e-mail, any attachments, or the information contained therein, is strictly prohibited. If you received this e-mail and you are not an intended recipient, please immediately notify TitleMax e-mail administrator at: [abuse@titlemax.biz](mailto:abuse@titlemax.biz) and permanently delete the original and any copy of this e-mail, any attachments, and/or any printouts thereof."



April 2, 2018

Financial Institutions Division  
Post Office Box 25101  
Santa Fe, NM 87504  
ATTENTION: Public Comments

RE: Notice of Public Hearing on Proposed Rulemaking

To Whom It May Concern:

TitleMax of New Mexico, Inc. ("TitleMax") is in receipt of the Notice of Public Hearing on Proposed Rulemaking from the Financial Institutions Division ("FID"). TitleMax appreciates the FID allowing licensees the opportunity to review the proposed rulemaking and allowing and considering comments. Below, please find – provided in the same format as the Notice – detailed questions and comments about the provided rulemaking. We appreciate our relationship with the FID and hope that these comments are helpful and constructive.

Please do not hesitate to reach out to me should you have any questions or need additional detail and I would be happy to discuss the same.

**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

TitleMax understands that these rules are repealed as the new statutory language provides what must be delivered with each licensee's annual report. Accordingly, TitleMax has no comments to this section.

**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, E, F of Section 8.

12.18.3.8: TitleMax has no comments concerning the amendments to 12.18.3.8.

12.18.4: TitleMax has concerns with the proposed amendment to 12.18.4.8 for several reasons. Initially, 12.18.4 requires 24-point font signage discussed in subsections (A) through (E) be posted on all websites, social media pages, and mobile applications operated by a licensed small loan company in addition to the mandatory information listed in subsections (F) and (G). To start, the terms “website,” “social media pages,” and “mobile applications” are not defined. To that end, TitleMax presumes that each website page (regardless of whether the content was specific to a New Mexico location), each social media post (Company Twitter, FaceBook, LinkedIn, or other social avenue), and mobile application page would require the mandatory signage in 24-point font. TitleMax, like most companies, has one main website that covers its entire footprint and brand. As such, the website has specific state and product pages that detail, among other things, store locations, what specifics are needed to do business with us, and other helpful information. TitleMax has designated pages for its New Mexico product. To display the required signage in 12.18.4 on every webpage on the TitleMax website would contradict other necessary disclosures for other states products. Moreover, disclosing such information in 24-point font would leave very little room on any webpage for anything else. Next, to include such signage on all social media posts would effectively eliminate the ability to communicate via social media. Twitter, for example, limits the number of characters an individual or company may use to communicate a message. The message outlined in 12.18.4, would exceed Twitter’s character limit itself, not to mention any true message. Lastly, a mobile application is meant to be viewed on a mobile device. Similar to TitleMax’s website, any mobile application would include any customers’ ability to login to manage his or her account regardless of state or product. To require that every page include the mandatory signage of 12.18.4 would effectively eliminate the ease of using a mobile device for the consumer. Not to mention the proposed font size would be overpowering on a mobile device could cause customer confusion concerning rates, and would require extensive development effort from our IT partners.

Next, 12.18.4 requires, in addition to the signage discussed above, that a licensee include a disclaimer on every webpage, social media post, and mobile application that a consumer may write or call an *individual*. This is problematic because the selected individual could leave the company, thereby causing significant effort and make it an extreme challenge to monitor and update the information. This coupled with the webpages, posts, and mobile application development necessary discussed above – a herculean task to begin notwithstanding any updates necessary for employee attrition. Additionally, by designating a specific employee to manage consumer concerns, emails and phone calls would be more difficult to manage when an employee takes vacation or ever needs leave (FMLA, etc.). TitleMax again agrees with the FID’s intent to make it easy for consumers to report problems that may arise. TitleMax instead proposes that a general number or email address be permitted which would allow businesses to monitor more widely (with a team of individuals) and assure issues are addressed more promptly. It would also eliminate issues being forwarded to representatives that are no longer employed and assure smooth transitions with employee turnover.

Third, upon TitleMax’s review of the new statutory provisions effectuated by HB 347, there is no discussion concerning the marketing of the services on websites, social media, or mobile applications. Accordingly, TitleMax requests that that the FID undertake a further review to determine whether the proposed rulemaking is narrowly tailored to meet the needs the FID is looking to protect. TitleMax would respectfully suggest that the FID (1) limit its requirements under 12.18.4 to webpages wherein a New Mexico licensee accepts a customer application for a

loan, and (2) allows licensees the ability to designate a department – such as the Compliance or Legal Department - rather than an individual, as the responsible party designated with responding to consumer complaints.

**Repeal and Replace the following rules:**

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

12.18.7: TitleMax has no comments to 12.18.7.

12.18.8: TitleMax suggests that subsection (f) be updated to include the following underlined and bold verbiage.

If a licensee engaged in the business of making small loans to New Mexico residents **as described above in sections (a)-(e)** 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.

**Adoption of the following rules:**

- 12.19.9 NMAC – REFUND ANTICIPATION LOANS
- 12.18.10 NMAC – ELECTRONIC MEDIA REQUIREMENTS

12.18.9: TitleMax has no comments to 12.18.9.

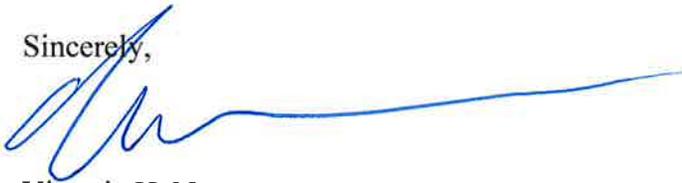
12.18.10: First, TitleMax has concerns with the proposed amendment to 12.18.10 for similar reasons discussed above concerning 12.18.4. Accordingly, TitleMax incorporates its comments to 12.18.4 herein. Further, “marketing site” is defined to include “any website, social media page, or mobile application 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.” 12.18.10(b) (emphasis added). Based on this definition, any webpage, social media post, or mobile application that even discusses TitleMax’s operations – regardless of whether it accepts a borrower application - would make it a “marketing site” and require the inclusion of not only the disclosures necessitated by 12.18.4.8 but also the brochure requirement listed in 12.18.3.8. Providing such disclosures on each webpage operated, social media post, and mobile application would be a tremendous burden and not reasonably calculated to protect consumers especially when a marketing site, by definition, does not have the ability to originate a loan for a consumer. Moreover, such disclosures could lead to confusion to potential or existing borrowers as such disclosures would contradict other state-required disclosures in other states. TitleMax respectfully suggests that the requirements of 12.18.4 are more suited to a “business site” than a “marketing site”. A consumer could never originate a loan through a marketing site while a consumer could originate a loan via a business site. Thus, any alleged harm remedied by requiring such changes to a marketing site pale in comparison to the burden to the licensee to manage such an undertaking.

Second, a “business site” is defined as “any website, social media page, or mobile application which a small loan business utilizes to engage in the business of lending through such site.” The “business of lending” is defined as “any person or business entity engaged in the origination of any extension of credit in the amount of \$5,000 or less, or the acceptance of a credit application containing a consumer’s personal information . . . .” 12.18.10.8(d) requires that a licensee post a disclaimer on every business site that a consumer may write or call an individual. As discussed above, this is problematic because the selected individual could leave the company, thereby causing significant effort and make it an extreme challenge to monitor and update the information from a development standpoint. Additionally, by designating a specific employee to manage consumer concerns, emails and phone calls would be more difficult to manage when an employee takes vacation or ever needs leave (FMLA, etc.).

Once again, pursuant to the new statutory provisions effectuated by HB 347, there is no discussion concerning the marketing of a licensee’s services on websites, social media, or mobile applications. Accordingly, TitleMax requests that the FID undertake a further review to determine whether the proposed rulemaking is narrowly tailored to meet the needs the FID is looking to protect. TitleMax would respectfully suggest that the FID (1) limit its requirements under 12.18.10.7 through 12.18.10.8 to business sites and not marketing sites, and (2) allows licensees the ability to designate a department – such as the Compliance or Legal Department - rather than an individual, as the responsible party designated with responding to consumer complaints.

Thank you for your consideration of the points outlined above. If the FID feels it would be helpful, I am willing to discuss the above in more detail at the FID’s convenience.

Sincerely,



Victoria H. Newman  
General Counsel  
TitleMax of New Mexico, Inc.  
15 Bull Street, Suite 200  
Savannah, GA 31401  
(912) 503-2824

**From:** [Carlotta Bird](#)  
**To:** [Otero, Maya, RLD](#)  
**Cc:** [Mora, David, RLD](#)  
**Subject:** Subject: Payday loans  
**Date:** Monday, April 2, 2018 4:52:30 PM

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Hello, please regulate the Payday lenders so that those who have to take these types of loans are not preyed upon unfairly. Please do all you can to cap the percentage they are able to charge to those unfortunate enough to fall into their web, and that the consumers of these loans are told clearly up front what the loan is going to end up costing them. The predatory practices of these lenders need to be stopped.

Carlotta Penny Bird

**SECURITY FINANCE OF NEW MEXICO, LLC**

HOME OFFICE  
P. O. BOX 811  
SPARTANBURG, SC 29304  
(864) 237-6113  
(864) 237-6019-Fax

Nancy H. Robinson  
Secretary and General Counsel

Street Address  
181 Security Place  
Spartanburg, SC 29307

March 29, 2018

**Via: Fax and Federal Express**

New Mexico Regulation and Licensing Department  
Financial Institution Division  
P. O. Box 25101  
Santa Fe, New Mexico 87504  
Attention: Public Comments

Re: Proposed Amendments to 12.18.4 NMAC--Mandatory Signage for All Small Loan Companies; 12.18.3 Mandatory Brochure for Small Loan Business; and Proposed 12.18.10 Electronic Media Requirements.

Dear Mr. Mora:

I. Introduction

Thank you for the opportunity of commenting on the proposed amendments to the above regulations. Security Finance has operated in New Mexico since 1993. It currently operates at 54 licensed locations. Over the past 25 years, Security Finance has established a reputation for legal compliance and concern for its customers.

Security Finance makes traditional installment loans pursuant to the Bank Installment Loan Act of 1959 as amended. Based on an analysis of applicant's income and living expenses, Security Finance will offer a loan from an established range of set amounts and terms. Thus, our smallest loan is for \$300 repayable in 6 monthly installments of \$70.00. The interest and processing fee is the same for every loan of that amount. The APR is 126.62. Our largest loan is for \$2,000 repayable in 18 monthly installments of \$180.00. The APR for that loan is 67.90%.

II. Mandatory Poster

Before the regulations become effective, we suggest the Financial Institutions Division (FID) develop model forms and examples or a process to approve posters before the effective date. Our reason is we asked several different people individually to layout the poster as mandated by the proposed regulations. We have received markedly different results from each and we are not sure any are totally correct. We are concerned that the regulation as drafted does not clearly explain the precise layout envisioned by FID.

12.18.4.8 B is particularly troublesome. It requires the lettering to "be no smaller than 24-point font, unless specified otherwise." The only other font specifications are contained in 12.18.4.8 E (3) and (4), which require 14-point font for three sentences. From a practical standpoint, it will be difficult to lay out the text on standard sized paper. Due to the limited number of posters

needed, this will result in a significantly greater per poster cost. The ideal size for the poster would be 11 x 17 inches. Any larger size would significantly increase printing and shipping costs for licensees with no countervailing benefit to consumers.

We suggest the Department consider revising the content of the poster to deliver a more focused message. Approximately half the poster concerns loan rates and terms and the other half addresses complaints. See proposed 12.18.4.8 F & G. The mandatory brochure already addresses Complaints. The mandatory poster does not need to repeat matters that are already contained in a mandatory brochure. See also, 12.18.4.6 (The objective of this part is to require prominent signage disclosing the schedule of loan rates and fees to assist consumers in the loan decision process.)

Any poster will be most effective as a tool to provide customers information before they get a loan. The information about complaints stays on the poster on the wall and it is unlikely that customers will absorb that information and take it home with them in their heads. On the other hand, the brochure is something customers can take home with them. Once the message has been refined, we suggest the Department should lay out that message out on a prototype that will give licensees clear guidance on the layout this is required.

In the process of improving the overall "look and feel" of the poster, the Department may want to consider addressing the following:

There is an inconsistency between 12.18.4.8 C that requires **LOAN RATES AND FEE** and 12.18.4.8 D that refers to "loan rates and fees." This appears to be the result of a typographical error and we presume the Department intended that the sign use bold capital letters and use the plural for "fees" instead of the singular "fee."

12.18.4.8 requires a schedule consisting of two distinctive "sections" with five "headings" starting from left to right. We interpret this to mean the headings should be laid out similar to the model Truth in Lending disclosures set forth in Regulation Z, but it is not clear. Because of the five headings and the 24-point font requirement for the majority of the text, this will be difficult to accomplish in a visually appealing manner. As indicated, a model form would be very helpful for compliance purposes.

The block with the heading ANNUAL PERCENTAGE RATE (APR) contains the requirement for the disclosure "Assumes a \_\_\_ day repayment period." The blank space is to be replaced with the actual number of days used for the calculation of the APR shown on the chart. This requirement is a holdover from the prior version of the regulation that only applied to Title and Payday loans. It is meaningless in terms of Security Finance's operations and, we believe, most other traditional installment lenders.

An APR is calculated according to the requirements of Regulation Z. That regulation allows a creditor to disregard the effects of months having different numbers of days. See 12 CFR §1026.17(c) (3) (iii). Security Finance's shortest-term loan is six months and payments are due on the same day of each month. The exact number of days in a loan's repayment period will vary depending on the actual date the loan is made. For example, the number of days in a six-month repayment period that includes February will be less than one that does not. For a six-

month loan, we would have to assume a repayment period of 180 days. For any loan is a longer term, we would multiply the number of payments times 30. FID should consider removing this requirement from the final regulation.

In 12.18.4.8 E 1 (a) we believe it is the Department's intent that the "heading" for APR in one section contain the lowest APR and the heading for APR in the other section contain the highest APR. FID should state this more clearly.

We are uncomfortable making the statement required by 12.18.4.8 E (1) (b) that

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."

This suggests that customers getting loans for the same amount might have different APRs based on the individual customer's credit worthiness. For Security Finance's loans that is simply not true. It would be more accurate to state: "Not all applicants will qualify for the same loan amount, term or rate."

12.18.4.8 E (2) requires a disclosure of "all *additional* fees that you may be charged" (emphasis added) without indicating what fees they would be addition to. Section 58-7-6 A. permits lenders making loans subject to the Bank Installment Loan Act to charge a total finance charge consisting "solely of interest and a fully earned processing fee." We believe that for such lenders the "additional fees" would be those permitted by NMSA §58-7-6 A (1) through (7). See also NMSA §58-15-20 for loans made under the Small Loan Act. If so, the regulation should be clearer on this. The instruction creates an ambiguity by saying "the heading shall be followed with a table containing a list of *all* fees that a borrower may be charged. It is also unclear if the regulation requires disclosure of just the types of fees that may be charged, but not the amounts.

12.18.4.8 E (3), (4), & (5) require headings for "Amount Financed," "Total of Payments" and "Number of Payment(s) used in the APR calculation" together with a brief definition of those terms, but do not explicitly state if further information should be inserted as 12.18.4.8 E (1) and (2) do.

Should the Department decide to retain the information regarding complaints, we would like to point out that 12.18.4.8 H provides both a Post Office Box and a street address. If retained, the information in the poster should be consistent with the brochure and use the street address.

Once the regulation becomes final, we would request that licensees have a minimum of 90 days to arrange for the printing and distribution of the posters. The regulation requires that the posters need to be "prominent" and "readily visible to borrowers." For at least the first examination following the effective date, examiners should provide guidance on the appropriate location, but refrain citing licensees for noncompliance if they feel the post is not prominent enough. Security Finance has 54 locations—no two of which are identical in layout. We expect every licensed lender faces a similar predicament. FID should work with licensees to come up with a consensus of what is prominent within a given location.

### III. Brochure

We have no concerns with the additional language to be added to the brochure required by proposed 12.18.3.8 D. (4), but we have two related concerns. The present regulation requires the brochures to be "readily available" and stocked in a rack by the main door entrance. The concept of "readily available" implies more flexibility than just in a rack. For example, would the brochure be any less available if we kept a supply at each closing booth? In the past our branches have experienced inconsistent interpretations during examinations on how close to the main door entrance the rack needed to be. As indicated above no two branch layouts are identical. Thus, the regulation should allow some flexibility on location within the branch.

The other issue concerns the effective date. We are reluctant to print new brochures until the regulation becomes final. Thereafter, licensees should be allowed a 60—90 period to print and distribute the new forms and use up their existing inventory of the current version.

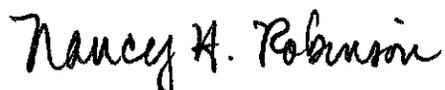
### IV. Electronic Media Requirements.

We do not have any substantive comments on the Electronic Media Requirements. For the most part, they appear to be a restatement of the current guidelines posed on FID's website. However, for 12.18.10.7, licensees maintaining a "Marketing Site" or a "Business Site" will need to post certain information and disclosures required by Subsection C of 12.18.3.8 (Mandatory Signage) and Subsection A of 12.18.4.8 (Mandatory Brochure). While posting this information on a website is not objectionable, the formatting requirements of 12.18.4.8 D are problematic. It is simply not possible to take the poster on the wall and shrink it down to post on a website or mobile app, etc. and have something that will meaningfully convey information. The regulation should recognize this and make it clear that the formatting requirements of 12.18.4.8. D are not applicable. Until those regulations are final, we will not have the final versions of the content to be posted. In addition, this will require a longer final compliance date because more third parties (e.g. software developers) will be involved in this process.

We appreciate the opportunity of providing our comments to FID and we hope they will result in improved regulations that will assist our customers in evaluating their credit needs.

Sincerely yours

**SECURITY FINANCE OF NEW MEXICO, LLC**



Nancy H. Robinson  
Secretary and General Counsel

**TREINEN LAW OFFICE**  
**FAX TRANSMITTAL**

<b>DATE:</b>	March 30, 2018		
<b>TO:</b>	Financial Institutions Div. ATTN: Public Comments	<b>FROM:</b>	Treinen Law Office PC Rob Treinen
<b>FAX:</b>	1(505)476-4670	<b>FAX:</b>	505.843.7129
<b>TEL:</b>		<b>TEL:</b>	505.247.1980
<b>RE:</b>	Proposed rulemaking in the wake of House Bill 347	<b>PAGES:</b>	<u>3</u> including this cover page

**COMMENTS:**

**THANK YOU.**

**Treinen Law Office PC**

500 Tijeras Ave NW  
Albuquerque New Mexico 87102  
(505) 247-1980  
(505) 843-7129 (fax)

March 30, 2018

**Via US Mail and Fax to (505) 476-4670**

Financial Institutions Division  
ATTN: Public Comments  
PO Box 25101  
Santa Fe, New Mexico 87504

***Re: proposed rulemaking in the wake of House Bill 347***

Dear Financial Institutions Division:

Thank you for the opportunity to comment on the FID's proposed rulemaking in the wake of House Bill 347.

I am a New Mexico consumer protection attorney. I have spent all of my 19-year career working on behalf of consumers, including significant litigation against lenders whose operations reach into New Mexico. During this time, I have seen the worst actors in the predatory lending industry run roughshod over New Mexico consumers, causing great economic and personal harm to New Mexico families. These companies, while organized in a way to hide this fact, are nearly always based in other states, but view New Mexico as an attractive market due to its weak consumer protection environment. As a result, historically the predatory lending industry has sucked considerable money out of New Mexico, adding to the State's epic poverty problems.

Rulemaking by the FID in the wake of the Legislature's passage of HB 347 provides a unique opportunity to at least partially remedy the horrible impact the predatory lending industry has had on New Mexicans. I urge the FID to specifically consider:

- Making sure that all loans extended after January 1, 2018, are governed by HB 347. The industry may attempt an end-run around the consumer protections of the new law by renewing existing loans through nominal modifications. FID should counter this subterfuge by defining covered loans as any transaction that includes a material change in terms as to the prior obligation, including any change in the number of payments.
- Continue with and enhance loan-level data collection, with reporting requirements that mandate separate reporting for each distinct loan product offered. In the past, lenders have attempted to evade consumer protection litigation by "averaging" the Annual Percentage Rates of various products in an attempt to hide products with unconscionable Annual Percentage Rates.
- Permit public access to the data collected by the FID, so that the lending industry can be effectively monitored by the press and by non-profits with a consumer protection focus.

On behalf of New Mexico consumers, I hope the FID will consider the above suggestions in order to best protect New Mexico consumers.

Truly yours,

A handwritten signature in black ink, consisting of a stylized, cursive 'R' followed by a long horizontal line that tapers to the right.

Rob Treinen

# Fax Transmission

**To:** Anita Wolff

**From:** Consumer Protection Fax

**Fax:** 15054764670

**Date:** 4/2/2018

**RE:** Fwd: Proposed Rules Promulgated by NM Reg an

**Pages:** 5

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**Comments:**

To Whom it May Concern:

Please see the attached Proposed Rule Chages Pursuant to NMSA 1978, Section 58-15-11.

Sincerely,

Anita Wolff  
Paralegal

\*Consumer and Environmental Protection Division\*  
\*Office of the New Mexico Attorney General\*  
\*201 Third Street, NW\*  
\*Albuquerque, NM 87102\*  
\*(505) 717-3575 <(505)%20717-3575> - telephone\*  
\*awolff@nmag.go <fnarro@nmag.gov>v <fnarro@nmag.gov> \*

Financial Institutions

APR 02 2018

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STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS  
ATTORNEY GENERAL

April 2, 2018

Financial Institutions Division  
PO Box 25101  
Santa Fe, NM 87504  
Attention: Public Comments  
Via fax: (505)476-4670

Financial Institutions Division  
APR 02 2018

RE: Proposed Rule Changes Pursuant to NMSA 1978, Section 58-15-11

Comments of the New Mexico Office of the Attorney General on

Proposed Rules Promulgated by the N.M. Regulation and Licensing Department

The proposed new rules and amendments make necessary changes to the small loan regulations reflecting the changes in New Mexico law effective January 1, 2018. The NMOAG supports the proposed new rules and changes, particularly the increase in font size making notices and disclosures more easily readable. The NMOAG suggests additional disclosures and some clarifications to ensure that consumers have as much information as possible to inform their decision in borrowing under the Small Loan Act and the Bank Installment Loan Act. The clarity and accuracy of signage and disclosures is key where, as recognized by our Supreme Court, "borrowers focus on the promise of quick cash, and fail to make more considered judgments about the long-term costs of the loan. They are also subject to "framing" and "anchoring" effects, meaning that the way the price of a loan is framed at the outset may distort

the prospective borrower's perception of the cost, and the borrower will retain that initial perception." *State v. B&B Inv. Grp., Inc.*, 329 P.3d 658, 666, 2014-NMSC-024.

**12.18.3 NMAC Mandatory Brochure**

--(D)(4) Definition of Annual Percentage Rate should be revised as the proposed description of APR as a measurement of the cost of credit "expressed as a yearly interest rate" may confuse consumers since the APR is a calculation combining both the interest rate and the fees charged by the lender. APR is generally higher than interest. *See National Consumer Law Center, Truth in Lending* (7<sup>th</sup> Ed. 2010 and 2013 Supp.), at pp. 222-223.

Proposal: Revise the definition of APR: "The APR is a combination of the interest rate plus the fees charged on your loan. The APR is higher than the interest rate because it includes both fees and interest as finance charges."

--(D) The terms defined in the brochure should also include allowable fees, providing consumers with a comparison for the fees charged in a loan.

Proposal: Add Fees and their definitions, including late or delinquency fees, dishonored check fees, processing fees (\$200.00 or up to 10% of the principal) and any other permissible fees under the Act.

--(D)(6) The definition provided is somewhat unclear as the amount owed on a debt typically includes the principal (amount borrowed) plus the fees and interest. The principal is generally considered to be the amount financed, which can include the actual loan amount plus any fees that are included in amount financed.

Proposal: "Principal. The amount of money *financed*, on which interest is calculated."

### 12.18.4 NMAC Mandatory Signage

--(E)(1) Definition of Annual Percentage Rate

Proposal: Add language that defines APR: "ANNUAL PERCENTAGE RATE (APR) followed by the words in bold font, "*The APR is a combination of the interest rate plus the fees charged on your loan. The APR is higher than the interest rate because it includes the fees as finance charges.* The cost of your credit as a yearly rate. Assumes a \_\_\_ day repayment period."

--E(1) It is unclear why the lender could use a loan period in the mandatory signage that differs from its typical term. This may be confusing to consumers. Since the statute requires a 120 day loan term, that term should be used in the "prominent sign" rather than permitting the lenders to use another different period of time. By requiring all lenders to use the same time period in their signage, consumers will be better able to compare terms and rates.

Proposal: "The cost of your credit as a yearly rate. Assumes a *120* day repayment period."

--E(1)(a) Permitting lenders to advertise a 'teaser' rate, one that is artificially low in order to lure borrowers, appears deceptive and could result in unfair practices. Signage should use a rate that most borrowers can expect to be charged if they walk in the door and apply for a loan.

Proposal:

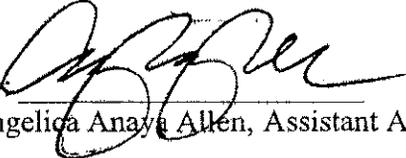
(a) The mandatory signage should use the highest rate charged by the lender (e.g., 175%) and state that some borrowers may qualify for a lower rate: "*Some applicants* will qualify for the lowest rate."

--(E)(1)(b) The NMOAG further urges FID to consider defining the term "loan" such that it is clear that the renewal or modification of a small loan product is subject to the fee and APR limits set forth in the current laws.

Proposal:

(b) Below the preceding sentences in bold type the following words shall appear, "Under New Mexico law, the APR for a *new or modified* 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 and seventy-five percent, effective January 1, 2018."

Respectfully submitted,  
HECTOR H. BALDERAS

By   
Angelica Anaya Allen, Assistant Attorney General

**From:** [Ruth Hoffman-LAM-NM](#)  
**To:** [Otero, Maya, RLD](#); [Mora, David, RLD](#)  
**Subject:** Comments on proposed rules regarding the implementation of HB347  
**Date:** Monday, April 2, 2018 4:09:14 PM  
**Attachments:** [Comments on HB347 rules.docx](#)

---

Our comments are below and attached. Thank you.

Ruth Hoffman, Director  
Lutheran Advocacy Ministry-NM  
1701 Arroyo Chamiso  
Santa Fe, NM 87505  
505.984.8005

**April 2, 2018**

**Via email**

**To: Financial Services Division  
Regulation and Licensing Department**

**From: Ruth Hoffman, Director**

**Re: Comments on proposed rule changes pursuant to §58-15-11  
NMSA 1978 concerning Title 12 - TRADE, COMMERCE AND BANKING,  
CHAPTER 18 - LOAN COMPANIES**

**Our comments involve several areas of the proposed rules:**

**There is a need to define in rules what constitutes a “loan modification”** in order to close the potential loophole where a lender rolls over or renews a pre-2018 loan at >175% under new terms in 2018, favorably modifying the loan in some way in exchange for a fee, thereby creating a de facto exemption from the new APR rate cap. The proposed regulations are silent on the issuing of addressing loan modification. The terms “renewal,” “new loan,” “refinance,” and “loan modification” have not previously been addressed in FID rules. Under the current regulations, NMAC Section 12.18.7 is titled “Terms and Conditions of Payday Loan Agreements.” This would be an appropriate place to include definitions of the above terms.

**There is a need to have clear and uniform disclosure of ALL fees.** We suggest that any advertising, brochures, mandatory signage, small loan disclosures, refund anticipation loan disclosures, marketing, and business websites all need to state, in clear terms that borrowers can understand, ALL of the fees can legally be charged to a borrower in the course of making a loan.

**There is a need to require meaningful data collection and maintenance so that these loans can be effectively regulated.** Without meaningful data reporting requirements, it will be impossible for regulators, the industry, or the public to



Lutheran Advocacy Ministry-New Mexico  
Rocky Mountain Synod  
Evangelical Lutheran Church in America  
God's work. Our hands.

1701 Arroyo Chamiso Santa Fe, NM 87505  
Phone/Fax 505.984.8005  
ruth@lutheranadvocacynm.org  
www.lutheranadvocacynm.org

April 2, 2018

**Via email**

To: Financial Services Division  
Regulation and Licensing Department

From: Ruth Hoffman, Director

Re: Comments on proposed rule changes pursuant to §58-15-11 NMSA 1978 concerning  
Title 12 - TRADE, COMMERCE AND BANKING, CHAPTER 18 - LOAN COMPANIES

**Our comments involve several areas of the proposed rules:**

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**There is a need to require meaningful data collection and maintenance so that these loans can be effectively regulated.** Without meaningful data reporting requirements, it will be impossible for regulators, the industry, or the public to discern either the total costs that the small loan industry is generating each year or the total costs of each loan product. Without this data, it is effectively impossible to regulate the small loan industry or enforce consumer protections because there is no way to see how the new law is impacting the loans issued and paid off in New Mexico.

**Lutheran Advocacy Ministry-NM works in advocacy partnerships  
with the Presbytery of Santa Fe and the NM Conference of Churches**



Rocky Mountain Synod, ELCA  
A Reconciling in Christ Synod • Christ's Church, Better Together

discern either the total costs that the small loan industry is generating each year or the total costs of each loan product. Without this data, it is effectively impossible to regulate the small loan industry or enforce consumer protections because there is no way to see how the new law is impacting the loans issued and paid off in New Mexico.

**From:** [Ruth Hoffman-LAM-NM](#)  
**To:** [Otero, Maya, RLD](#)  
**Subject:** proposed regulations regarding HB347 implementation  
**Date:** Monday, March 26, 2018 3:56:19 PM

---

Dear Ms. Otero,

Please direct me to the proposed regulations regarding the implementation of HB347 (2017). I have search the RLD website and can not find them. §58-15-11 NMSA 1978 concerning Title 12 - TRADE, COMMERCE AND BANKING, CHAPTER 18 - LOAN COMPANIES.

Thank you,

Ruth Hoffman  
Lutheran Advocacy Ministry-NM

**From:** [George Richmond](#)  
**To:** [Otero, Maya, RLD](#); [Mora, David, RLD](#)  
**Subject:** Better treatment for small loan borrowers  
**Date:** Tuesday, March 20, 2018 10:36:31 AM

---

I write to you as a Board Member, League of Women Voters Central New Mexico and Member, Common Cause, New Mexico.

Shortly you will begin work on proposed regulations which will signal progress for fair loan terms and a more inclusive economy for all New Mexicans.

I urge you to act in the best interest of the borrowers and stop predatory lending & keep these unscrupulous lending practices from harming any more families in New Mexico.

Thank you very much,

George Richmond

--

George M. Richmond  
152 Juniper Hill Road, NE  
Albuquerque, NM 87122-1913

C: 505-280-2105

E: [geomrich1@comcast.net](mailto:geomrich1@comcast.net)

**From:** [Laurie Weahkee](#)  
**To:** [Otero, Maya, RLD](#); [Mora, David, RLD](#)  
**Subject:** FID Regulation Testimony from NAVAEP  
**Date:** Monday, April 2, 2018 4:31:22 PM  
**Attachments:** [NAVAEP FIDTestimony2April18.pdf](#)

---

Good afternoon,

I have enclosed our testimony regarding the FID regulations on HB347 that was passed in 2017. If you have any questions or concerns, please feel free to contact me at [lawarehkee@gmail.com](mailto:lawarehkee@gmail.com) or 505-246-1819. Thank you.

Laurie Weahkee

--

Laurie Weahkee  
Native American Voters Alliance  
P.O. Box 35698  
Albuquerque, NM 87176  
505-246-1819 (o)  
505-238-9243 (m)



Native American Voters Alliance  
Education Project

April 2, 2018

Attn: Mr. Christopher Moya, Acting Director  
NMRLD- Financial Institutions Division  
P.O. Box 25101  
Santa Fe, NM 87504

RE: The Financial Institution Division - Regulation Clarification and Improvement

Dear Mr. Moya,

The payday, Title Loan and Refund Anticipation Loan industry have negatively impacted Native American communities with high APR and unfair lending schemes. We have seen many of our people utilize this industry to pay for things like: car repairs, art supplies, ceremonial, and educational costs. We have seen that many of our families are struggling to pay for basic needs and they have by and large paid off their original debt only to be charged ongoing interest and fees.

We want to go on record saying that the public has the right to better understand the impact this industry has on the NM economy. Prior to the passage of HB347, we had no information on how much money the industry made because loans under the 175% APR weren't reported. We still don't know the extent to which the Native community has been indebted to the small loan industry. We know that the small loan industry will continue to exploit NM consumers if we do not have aggregate information about the loan products, the amounts borrowed, fees, and number of rollovers among other pertinent information. In order to bring fair lending to New Mexico, the small loan industry must report quality information to the FID to ensure we have transparent and appropriate governance of these industries.

We are asking you to protect New Mexico consumers by ensuring that the small loan industry is properly regulated.

1. We are requesting that the FID hold field hearings around New Mexico. Holding hearings in McKinley, Cibola and San Juan County is imperative to understanding how the Native American community has been impacted and could benefit from improved regulations.
2. The FID must clarify the definition of a "Loan modification". The definition must be clarified so that any loopholes that would allow 'rollover' loans to continue charging APR over 175% will not be allowed.
3. Ensure that all fees are disclosed ahead of time. Nationally, and locally one of the most prevalent problems with small lending is that all the early disclosures for fees are in tiny print, and not reasonably visible. They need to be clear so that consumers are can be assured of transparency.
4. Disclosures must be available in Navajo, Spanish, English, and Vietnamese. A comprehensive understanding of these agreements can help consumers immensely.



Native American Voters Alliance  
Education Project

5. Make provisions to allow New Mexico consumers to "opt out" of the credit reporting. Many employers don't look favorably on those that borrow from payday lenders; unfortunately, some employers use credit reports to make decisions on who they hire.

Sincerely,

A handwritten signature in blue ink that reads "Laurie Weahkee". The signature is written in a cursive, flowing style.

Laurie Weahkee, Executive Director  
Native American Voters Alliance  
505.246.1819

## Mora, David, RLD

---

**From:** Otero, Maya, RLD  
**Sent:** Tuesday, April 3, 2018 9:25 AM  
**To:** Mora, David, RLD  
**Subject:** FW: Implementation of HB347

---

**From:** ELMER BEV JACKSON [mailto:elmerbeverly@msn.com]  
**Sent:** Tuesday, March 20, 2018 8:47 AM  
**To:** Otero, Maya, RLD <Maya.Otero@state.nm.us>  
**Cc:** Ona Porter <ona@prosperityworks.net>  
**Subject:** Implementation of HB347

I support the efforts of Prosperity Works to revise proposed regulations

Elmer Jackson  
Albuquerque  
505 264 5124  
Get [Outlook for Android](#)

Exhibit 32

## Mora, David, RLD

---

**From:** Otero, Maya, RLD  
**Sent:** Monday, March 19, 2018 9:20 AM  
**To:** Mora, David, RLD  
**Subject:** FW: Predatory Lending

Is this regarding the rule change??

See below

**From:** Anthony Harkness [mailto:anthonyharkness65@gmail.com]  
**Sent:** Monday, March 19, 2018 9:18 AM  
**To:** Otero, Maya, RLD <Maya.Otero@state.nm.us>  
**Subject:** Predatory Lending

I do not support predatory lending and am hopeful that the following issues will be considered as you are evaluating the regulations.

1) defining what it means to make a loan; 2) improving fee disclosures; 3) data collection and maintenance; 4) language access; 5) opt-out provision for credit reporting.

--

Peace.

Anthony

"Do not be daunted by the enormity of the world's grief. Do justly, now. Love mercy, now. Walk humbly, now. You are not obligated to complete the work, but neither are you free to abandon it!" Rabbi Tarfon

Exhibit 33

## Mora, David, RLD

---

**From:** Jacob Vigil <JVigil@nmvoices.org>  
**Sent:** Monday, April 2, 2018 9:32 AM  
**To:** Otero, Maya, RLD  
**Cc:** Mora, David, RLD  
**Subject:** Public comment re: proposed small lending regulations  
**Attachments:** NMVC comments on small loan regs-2018.pdf

Hello,  
Please find public comment from New Mexico Voices for Children attached.  
Thank you,

Jacob Vigil, MSW

Research and Policy Analyst

New Mexico Voices for Children

(505) 244-9505 Extn. 102

[jvigil@nmvoices.org](mailto:jvigil@nmvoices.org)

[www.nmvoices.org](http://www.nmvoices.org)

[www.datacenter.kidscount.org](http://www.datacenter.kidscount.org)

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March 29, 2018

**Public comments on proposed rule changes pursuant to §58-15-11 NMSA 1978 concerning  
Title 12 - TRADE, COMMERCE AND BANKING, CHAPTER 18 - LOAN COMPANIES.**

New Mexico Voices for Children (NM Voices) is a nonpartisan, statewide advocacy organization working to improve the lives of New Mexico’s children by advocating for public policies that lay a foundation of opportunity so all New Mexicans can prosper. Unfortunately, some lending practices have long stifled economic opportunities for New Mexico’s hard-working families, some of whom borrow money from payday lenders to cover emergencies or help them afford basic living expenses, or take loans in advance of a tax refund. Yet, the average cost of fees, interest rates, and rollover expenses of the loans may exceed the amount of the original loan by an exorbitant amount and can quickly grow beyond what the borrower could ever repay. Too frequently, this leaves borrowers stuck in a cycle of debt that harms their economic well-being and stifles their opportunity to grow resources for their families. What’s worse, predatory lending practices cause the most harm to those who already face the greatest economic challenges in our state including single mothers, low-income families, veterans, and people of color.

NM Voices is pleased to have the opportunity to submit public comment to the Financial Institutions Division on proposed rule changes concerning small loans with the hope that these comments will help ensure that the rule changes better protect opportunities for New Mexico’s families.

**Recommendations**

- NM Voices urges FID, consistent with *State of NM v. Fastbucks*, to define a “loan modification” made to a pre-2018 loan agreement as a “new loan” – whether the modification is a fee paid in exchange for better loan terms or new money added to the existing principal.
  - Pay-day lenders have a long history of being extremely creative in order to skirt legislation enacted to protect consumers. Absent a definition clarifying that any “loan modification” constitutes a “new loan,” lenders may try to modify pre-2018 loans at pre-2018 interest rates, which were far higher than the 175% cap, thereby creating a *de facto* exemption from the new APR cap.
  - NMAC Section 12.18.7 of the existing regulations, titled “Terms and Conditions of Payday Loan Agreements,” is the appropriate place to include the above definition, in addition to defining the terms “renewal,” “new loan,” and “refinance.”
  
- NM Voices strongly urges FID to require meaningful loan data reporting beyond the statutory minimum requirements by reinstating the data reporting requirements established by NMAC 12.18.5 and 12.18.6 for payday and title loans in order to effectively regulate these products.
  - The proposed reporting requirements under 58-15-10.1 are so minimal that neither regulators, the industry, nor the public will be able to discern either the total revenues that the small loan industry is generating each year, or the total costs of each loan product. Without this data, it will be effectively impossible to regulate the small loan industry or enforce consumer protections because there will be no way

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Charlotte Little

Cindy Nava

Gloria Rendon, Ed.D.

to see how the new law is impacting the loans issued and paid off in New Mexico. FID has followed more robust reporting requirements in the past, issuing the Annual Data Reports established by NMAC 12.18.5 and 12.18.6 for payday and title loans.

- In addition, with the proposed reporting requirements, FID will be unable to fulfill its statutory obligations under 581-15-29(B) to report annually to the legislature “data adequate to obtain an accurate understanding of the practices, demographics and legal compliance of all licensees licensed in the state.”
- NM Voices recommends that the mandatory disclosures required by law and regulations enacted pursuant to the BILA and SLA be made available in English, Spanish, Navajo, and Vietnamese. In addition, the language in which the loan transaction is conducted should be the language in which the loan documents are written.
  - Failing to provide the borrower with a copy of the loan agreement in the language in which the transaction is conducted is deceptive and fails to adequately disclose the terms of the agreement in a manner that is accessible to borrowers.
- NM Voices strongly recommends that an opt-out provision be included in the required disclosures for refund anticipation loans under the proposed NMAC 12.18.9 and for all small loans under NMSA 58-15-17 so customers can avoid disclosure of personal information to credit reporting agencies.
  - We applaud the legislature for adopting a statute that gives borrowers the right to build their credit with small loans so that they can eventually turn to more traditional financial institutions, however borrowers need to be given the option to opt out of credit score reporting.
- NM Voices strongly urges FID to provide uniformity in disclosures of the fees that licensees can charge borrowers.
  - Any advertising, brochures, mandatory signage, small loan disclosures, refund anticipation loan disclosures, marketing, and business websites all need to state, in clear terms that borrowers can understand, what fees they can legally be charged to a borrower in the course of making a loan.
- NM Voices recommends that disclosures of fees be clear and straightforward, written in terms that borrowers can understand, and accessible in all forms of disclosures.
  - Under the law and proposed regulations, it is nearly impossible for a borrower to understand what fees they can legally be charged in connection with their loan.
  - Without clear disclosures of rights under the BILA and the SLA, loans are not transparent and borrowers cannot fully understand the terms of their loan agreements.
- NM Voices recommends that disclosure of all fees that the licensee *may* charge be required in addition to a box for finance charges on the schedule of charges, not *in lieu of*, as proposed in NMAC 12.18.4.

New Mexico Voices for Children appreciates the opportunity to submit comments on the proposed regulations on small lenders. If we can be of further assistance in the development or implementation of the regulations, please do not hesitate to contact us.

Thank you,



James Jimenez  
Executive Director,  
New Mexico Voices for Children



## Office of Navajo Nation Human Rights Commission

---

P.O. Box 129  
St. Michaels, AZ 86511  
Phone: (928) 871-7436  
Fax: (928) 871-7437

New Mexico Financial Institutions Division  
Santa Fe, New Mexico

**PUBLIC HEARING**  
April 3, 2018

In 2006, the Navajo Nation Human Rights Commission ("Commission") was established by the Navajo Nation Council and opened for operation in 2008. One of the mandates for the Commission is to educate its Navajo citizens on their human rights. Recently, the Commission has emphasized on consumer credit education and has partnered with various agencies to provide information on small loans. The most recent activity on consumer credit education was March 21-22, 2018, at Farmington and Gallup, New Mexico.

### **COMMUNICATION: LANGUAGE ASSISTANCE**

Another mandate for the Commission is it investigate written complaints of discrimination and human rights violations. The Commission believes every person has the right to live free of discrimination and human rights violations, this includes entering into any legal contract that could cause mental and emotional harm on the person, especially if the person is an elder. Unfortunately, small loan lenders in New Mexico that surround the Navajo Nation often do not exercise this human rights.

When a Navajo elder files a complaint with the Commission on a small loan, a significant amount of time is spent explaining the content of a small loan contract in the Navajo language because the terminology of fees, interest rates, payments with interest, and principles from the English language does not readily match the Navajo language. Many of the elders leave the Commission office feeling more frustrated because they explain, "if someone would have explained the contract thoroughly in Navajo before signing the contract, I would have not taken the loan."

While these small loan lenders may hire Navajo speaking employees, although the employees may speak the Navajo language fluently this does not guarantee that such staff will properly and effectively explaining the loan documents. Proper vocabulary and sentence structure are all parts of an effective interpretation of the loan documents. Unfortunately, many of these small lenders that interact with Navajo speaking elders do not take the time or effort to ensure their Navajo speaking employees are properly trained to interpret the loan documents. Because of the language gap, many Navajo elder consumers are taken advantage of by these small loan lenders.

Exhibit #35

[www.nnhrc.navajo-nsn.gov](http://www.nnhrc.navajo-nsn.gov)

343 Arizona Hwy 264 ♦ St. Michaels Professional Bldg.1, Suite 112 ♦ St. Michaels ♦ Arizona ♦ 86511

## OUTREACH: PUBLIC EDUCATION AND PARTNERSHIP

The Commission has held several outreach seminars that educate Navajo citizens of their human rights. On consumer credit and consumer rights, the Commission partners with the Consumer Financial Protection Bureau, Federal Trade Commission, New Mexico Center on Law and Poverty, New Mexico Attorney General's Office, etc., so participants understand their rights under federal and state law. The Commission strongly believes that proper consumer education is the means to reduce issues with small loan lending.

Navajo citizens, especially the elders, often grasp consumer concepts by presenting it to them in an illustrative manner. It is often difficult to calculate annual percentage rate when presented in a non-illustrative manner. However, with proper presentation Navajo consumers can grasp the information and make informed decisions when entering into a small loan contract. This includes presenting the information that is culturally relevant, breaking down the consumer concepts in simpler terms, and presenting the information in the Navajo language where necessary.

The Commission is willing to assist the small loan lenders and New Mexico Financial Institutions Division in developing the necessary brochures, pamphlets and education materials for distribution to Navajo consumers. More importantly, FID must spend time and effort to listen to consumers that are poverty stricken, but they are the ones that have a very difficult time spinning out of the debt cycle.

Finally, the Commission also supports the presentation by New Mexico Center for Law and Poverty.

If you have any question, please do not hesitate to contact me at [leonardgorman@navajo-nsn.gov](mailto:leonardgorman@navajo-nsn.gov) or (928) 871-7436.

Sincerely,



Leonard Gorman, *Executive Director*  
Office of Navajo Nation Human Rights Commission



# ALL PUEBLO COUNCIL OF GOVERNORS

Officers:  
E. Paul Torres, Chairman  
Governor J. Michael Chavarria, Vice Chair  
Governor Val Panteah, Sr., Secretary

Acoma April 24, 2018

Cochiti Director Christopher Moya  
New Mexico Financial Institutions Division  
Isleta 2550 Cerrillos Road  
Jemez Santa Fe, NM 87505

Laguna Dear Director Moya,

Nambe The All Pueblo Council of Governors (APCG) represents nineteen federally  
Ohkay Owingeh recognized Indian tribes in New Mexico and one in west Texas. We urge the Financial  
Picuris Institutions Division to adopt strong regulations to address a predatory lending practice that  
Pojoaque perpetuates a cycle of debt causing serious economic hardship for many tribal members  
Sandia and their families. It involves short term loans and a practice known as payday, title, or  
store front lending. In New Mexico, the highest concentration of short-term loans with  
San Felipe inordinate high interest rates are made in cities and towns, with Native American  
populations becoming the target of this type of lender. Incredibly, data shows there is a  
licensed small lender for every 500 people who live in the city of Gallup. In Espanola,  
there are 14 such lenders. Santa Fe has 22, Taos with 7 and Grants has 13.

San Ildefonso In 2017, the New Mexico state legislature passed legislation mandating regulation.  
Santa Ana The measure also capped interest rates at 175%. While the reduced rate may be  
Santa Clara conciliatory, it is still essential that effective regulations be crafted and strictly enforced in  
order to protect some of the most vulnerable in our state. We are aware that ineffective  
regulation has sometimes led to sky-high interest rates, which trap low income borrowers  
in a cycle of on-going debt.

Santo Domingo We urge the New Mexico Financial Institutions Division to strongly consider  
Taos adopting the following proposed regulations:

- Tesuque
- Ysleta del Sur
- Zia
- Zuni
- 1) Require that small loan transactions be conducted in the borrower's primary language; where feasible, any written material should also be provided in the borrower's primary language in order to assure a clear understanding of rates, fees and terms of the financial transaction including penalties.
  - 2) Borrowers should not be required to pay an extra fee for translation services.
  - 3) Integrate and establish a consumer education and financial literacy program that conforms with the linguistic needs of Native borrowers;
  - 4) Detail data reporting requirements for lenders on specific loan products

Exhibit #38

- 5) Differentiate “tax refund anticipation loans” from related “holiday loans” and provide the necessary consumer protections under HB 347 with an explanation of the difference between the two similar, but very different loan products.
- 6) Define in regulation what constitutes a “loan modification” and what constitutes a “new loan” in order to close the potentially glaring loophole of extending multiple renewals or “rollovers” without principal reduction, a practice that is inconsistent with sound lending practices and consumer protections.

Under the New Mexico State-Tribal Collaboration Act, we believe the state has a duty to collaborate with the Pueblos and address issues that may severely impact tribal communities. In this case, sufficient data and evidence exists and has been provided regarding small loans and the impact of predatory lending on the economic well-being of Pueblo members. We invite you to meet with the APCG to discuss this issue. In particular, we would like to share with you areas of concern that we have regarding the development of regulations for installment, title, and tax refund anticipation loans. Please let us know when you are available to meet by contacting our Executive Director, Alicia Ortega at [APCG@indianpueblo.org](mailto:APCG@indianpueblo.org) or 505.212.7041. We look forward to working with the State of New Mexico towards effective regulation of the small loan industry.

Sincerely,



E. Paul Torres, APCG Chairman

cc:

David Mora, Industry Manager, Financial Institutions Division

Kevin A. Graham, Senior Enforcement Counsel, Financial Institutions Division

Brian Egolf Jr., Speaker of the House

Mary Kay Papen, Senate President Pro Tempore

Peter Wirth, Majority Floor Leader

**VIRTUE & NAJJAR, PC**

RICHARD L. C. VIRTUE  
DANIEL A. NAJJAR

OF COUNSEL  
BOB D. BARBEROUSSE  
MARK CHAIKEN

LAWYERS  
Financial Institutions Division

MAY 14 2018

2200 BROTHERS ROAD  
P. O. BOX 22249  
SANTA FE, NEW MEXICO  
87502-2249  
(505) 983-6101  
FAX: (505) 983-8304

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**DATE: 05/14/18**

**ATTN: Public Comments**

**FAX NUMBER: 505-476-4670**

**FROM: Virtue & Najjar, PC**

**SUBJECT: Notice of Public Hearing on Proposed Rulemaking – Loan Companies**

**TOTAL PAGES: 5 (Including Cover Sheet)**

Good Afternoon, attached you will find a faxed copy of Comments on Proposed Small Loan Regulations On Behalf of Axxess Financial Service, Inc. Should you have any questions, please contact us at [redacted] or 505-983-6101 ext. 0.

Cybele Carpenter

May 14, 2018

Comments on Proposed Small Loan Regulations

On Behalf of

Access Financial Services, Inc.

Access Financial Services (“Access”) respectfully submits the following comments on the proposed Financial Institutions Division changes to rules and regulations pursuant to Section 58-15-11 NMSA 1978 and the requirements of HB 347 which was enacted in 2017 and became effective on January 1, 2018.

Access attended the April 3, 2018 public hearing on the proposed regulations that was held in Santa Fe to receive and consider comments. Access did not present any comments at that time but took note of the positions of other participants. In general, Access believes that it can implement the proposed rules and regulations as currently worded. Two concerns did arise, however, from the presentations that were made at the public hearing. Access submits these comments to address those concerns.

Access is concerned with the proposal made by a few parties, including the Center on Law and Poverty, which we understand would allow the consumer to prevent a lender from reporting the terms and conditions of an installment loan made pursuant to the New Mexico Bank Installment Loan Act of 1959 (“Bank Installment Act”) or the New Mexico Small Loan Act of 1955 (“Small Loan Act”) to a consumer reporting agency, otherwise commonly known as a “credit bureau”. Access understands from a brief meeting with some of the advocates for this proposal that the intent is to protect the privacy of some prospective borrowers. However, this proposal, while well-intentioned, is prohibited by the clear language of Section 58-7-10 NMSA 1978 and Section 58-

15-10.2 NMSA 1978. Each of these provisions requires an installment lender to report to a consumer reporting agency the terms of the loan and the borrower's performance pursuant to those terms.

Section 58-7-10 NMSA 1978 provides:

For each installment loan made pursuant to the New Mexico Bank Installment Loan Act of 1959, a lender shall report to a consumer reporting agency the terms of the loan and the borrower's performance pursuant to those terms.

Section 58-15-10.2 NMSA 1978 provides:

For each installment loan and refund anticipation loan made pursuant to the New Mexico Small Loan Act of 1955, a lender shall report to a consumer reporting agency the terms of the loan and the borrower's performance pursuant to those terms.

In addition to the clear language in these statutory provisions which were enacted as part of HB 347, there are strong policy reasons for these reporting requirements. These provisions which require reporting to consumer reporting agencies the terms of loans and the performance of the borrower pursuant thereto were specifically included in HB 347 to protect consumers against predatory practices. Various participants in the legislative process when HB 347 was considered argued that loans were deliberately being made to individuals with no reasonable ability to ever repay the loan, thereby triggering an endless cycle of debt. In response to this concern, the final version of the legislation incorporated the requirement that lenders making installment loans must essentially use the services of consumer reporting agencies.

Axcess has utilized and relied upon the services of these consumer reporting agencies for some time to determine the creditworthiness of many prospective borrowers and finds these services to be valuable in assessing the risk of a particular loan under consideration. The goal of every lender should be to make loans to individuals with the ability to repay the loan. Absent some reliable information on the creditworthiness of the prospective borrower, the risk of making a loan

that cannot or will not be repaid increases substantially. For this reason, as well as the clear requirements in the Bank Installment Act and the Small Loan Act, Access respectfully requests that proposed revisions which would allow a borrower to preclude the use of a consumer reporting agency be rejected.

An additional concern of Access arising from the comments previously submitted in this proceeding involves the proposal to mandate that lenders utilize the "primary language" of the borrower when providing a written explanation of the terms and conditions of the loan. Access believes that compliance with such a requirement would be very difficult, if not impossible, to satisfy. Some languages may not be readily available in written form (or at least in a form that is universally accepted). Moreover, this requirement could impose an obligation on every lender to translate and print documents in numerous languages, regardless of the size and needs of any particular group.

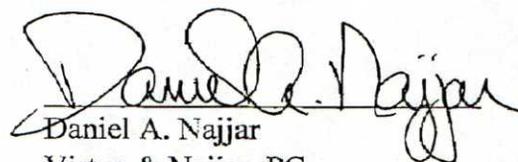
Several questions would need to be addressed. At what point would the requirement be imposed? Is there to be a minimum threshold number of individuals speaking a language before this requirement is triggered? Would it be necessary to provide this information to a prospective borrower who was also fluent in English or Spanish? Any requirement to print loan documents and all related disclosures in another language which is either not commonly used in New Mexico or does not have a generally accepted written form could effectively eliminate a prospective group of borrowers.

Consideration of alternative means by which to enable a borrower to understand the terms and conditions of a loan should be part of this process. Access supports a requirement that the lender must make a reasonable effort to assure that the prospective borrower understands the terms and conditions of a loan before making a loan to such person. However, Access believes that there

are other measures which can be utilized to assure that a prospective borrower understands the terms of the loan, without imposing a requirement that in every instance documents must be written in a language that the borrower may not read or may not require.

Access remains committed to working with all interested parties to assure that the intent of HB 347 is fulfilled through the promulgation of regulations.

Respectfully submitted,



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