

**New Mexico Regulation and Licensing Department
Financial Institutions Division**

**Statement of Rules Changes Related to Licensees under the Small Loan
Company Act of 1955 (SLA) and Changes Made from the Proposed Rules
To the Final Adopted Rules
(Effective September 15, 2018)**

NMAC 12.18.2

This rule is repealed effective September 15, 2018. The prior rule dealt solely with the subject of “lender’s exchanges” which were required under the terms of §58- 15-18 NMSA 1978; however, that statute was repealed by HB 347 (effective January 1, 2018), which made the rule moot. In light of the statutory change, the rule no longer served an appropriate regulatory purpose and must be repealed.

NMAC 12.18.3.8

This rule is amended effective September 15, 2018. The prior rule was amended at Section 8, with changes made to Subsections A, D, and E.

(A)

Remove the words “the state of”. This was a change requested by the State Records Center to conform the rule to the current required format.

(D)

Increase the font size of certain information on the mandatory brochure for small loan businesses from the prior minimum size of 10 point font to the new minimum size of 12 point font. This change was proposed for the purpose of making the information easier to read.

(D)(4)

Language was added to the definition of “Annual Percentage Rate (APR)” to make certain borrowers would be informed that “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 (SLA) or the Bank Installment Loan Act of 1959 (BILA) cannot exceed one hundred seventy-five percent, effective January 1, 2018.”

Changes from the Proposed Rule to the Final Rule:

Remove the current wording of this subsection that reads: “This measures the cost of credit expressed as a yearly interest rate.” Replace that wording with the following: “APR is a combination of the interest rate plus the fees charged on your loan. APR is higher than the interest rate because it includes both fees and interest as finance charges. It is intended to provide a single value for a consumer to compare the cost of credit between one lender and another.”

Rationale for Changes:

The brochure being amended is intended to provide consumers with information that will aide them in making lending decisions. Commenters suggested providing additional information to consumers on this subject and the FID agreed a more detailed statement on this terminology would provide consumers with a better understanding of the matter.

(E)

The font size of certain information on the mandatory brochure for small loan businesses is increased from the prior minimum size of 10 point font to the new minimum size of 12 point font. Also, the Post Office Box number is added to the language providing the mailing address for the FID ["P.O. Box 25101"]. These changes were proposed for the purposes of making the information easier to read, and to insure any mail sent to the Division is properly addressed/delivered.

NMAC 12.18.4:

This rule is amended effective September 15, 2018, by amending Part 4, as well as Part 4 Sections 2, 6, and 7, and amending Section 8 at Subsections A, C, D, E, F, G, and H.

PART 4

The title of this Part is amended to delete the words "Payday Lenders and Title" and replace those with the words "All Small" so that the entire rule will apply to all small loan licensees (not just those lenders who had previously offered "Payday" loan products, as such loan products had been defined and limited under the terms of §§58-15-32 through 58-15-39 NMSA 1978, prior to the repeal of those statutes, effective January 1, 2018.)

12.18.4.2

The "Scope" provision of the rule was amended to likewise remove the references to "Title Loan and Payday Loan" to clarify that this rule will now apply to all small loan licensees.

Additionally, the words "the State of" were removed in conformance with the State Records Center's required format.

12.18.4.6

The "Objective" provision of the rule, concerning signage that is required to be displayed at all small loan licensee locations, was amended to delete the words "charges to obtain a loan" and the words "loan rates and fees to assist consumers in the loan decision process" were inserted. This change was made in keeping with the foregoing amendments to the rule making the rule applicable to "all" small loans made by licensees under the SLA.

12.18.4.7

The definitions of "Title" and "Payday" at the prior subsections (A) and (B) were deleted from the rule because those terms were previously related to specific types of small loan products under the SLA prior to January 1, 2018, which were statutorily repealed. Therefore, the definitions included in the prior rule are no longer necessary and should be removed. A new definition was added which reads: "Annual Percentage Rate" or "APR" means the measure of the cost of credit, expressed as a yearly rate."

12.18.4.8

The title of this Section was amended to strike the prior references to "Payday Lenders and Title" due to the repeal of those provisions under the SLA effective January 1, 2018. The words "ALL SMALL" are added to the title to make it clear that the mandatory signage required by the rule will apply to "all" small loan company licensees, and not just those offering certain types of small loan products.

(A)

- The words “Title and Payday” are struck and replaced with the word “small” to make it clear this provision will apply to “all” small loan company licensees.
- The words “schedule of charges” was struck due to the referenced “schedule of charges” no longer being required by the Small Loan Act after the enactment of HB 347 (effective January 1, 2018).
- New wording was added reading: “the annual percentage rate and fees.” This change to the mandatory signage relates to the new requirement under HB 347 limiting the APR on loans of \$5,000 or less made pursuant to the SLA or the BILA to no more than 175% and limiting the fees that may be charged on such loans.
- The prior wording concerning the mandatory sign reading “with font, no smaller than 10-point, must be displayed at every workstation where loans are originated” was deleted and replaced with “shall be easily accessible to consumers to review on all websites, social media pages, and mobile applications operated by a licensed small loan company.”

Changes from the Proposed Rule to the Final Rule:

The original proposed language was amended in the Final Rule at subsection (A) to read: “All small loan companies must display in each licensed place of business a prominent sign, readily visible to borrowers, disclosing the annual percentage rate and fees. On all company websites, social media pages, and mobile applications where content regarding loans offered or made to borrowers in New Mexico may be accessed by consumers, the prominent sign, in a reduced form, shall be easily accessible to consumers to review via an interactive link to a New Mexico specific web page maintained by the company containing all information required to be on the sign mandated by this section.”

Rationale for Change:

Comments received from the industry indicated it would functionally be very difficult to include all of the information from the required signage on every electronic media format utilized by licensees (webpage, mobile application screen, social media, etc.). Rationally, there are limitations on the amount of text or data that may be displayed in a readable or useful format on many types of electronic devices and applications. Upon review of these comments, Division staff took into consideration additional factors related to modern electronic communications tools, including, but not limited to, the small size of screens on hand-held devices utilized by many consumers to access the internet, limits on data volume/characters for some social media applications, and the technical proficiency (highly skilled vs. lesser skilled) of many consumers who utilize electronic media and devices in relation to their financial activity. A concern of the Division was that if a significant volume of text was added to every licensee webpage/site/application, there may be a negative effect of prompting consumers to “skim over” or simply ignore large portions of the information provided (in much the same way as is often said about contracts, or other legal documents, that are sometimes seen as “too long” or “too technical” to be understood.) The ultimate goal for this rule provision is to make certain New Mexico consumers utilizing electronic devices for their interaction with small loan licensees will have readily available access to the same consumer information required to be included on the signs physically displayed in small loan licensee storefronts. By amending the wording of this provision to require licensees to place an interactive link to a New Mexico specific web page containing all of the same information mandated for the signs physically located in licensee storefront lending sites, the goal of making this information available to consumers should be effectively accomplished.

(C)

The words “SCHEDULE OF CHARGES” are struck, and replaced with the words “LOAN RATES AND FEES.” Under the changes made to the SLA effective January 1, 2018, the prior “schedule of charges” that related only to “payday” loans was rendered moot and no longer necessary to be defined in rule, so it has been deleted. Because this rule will now pertain to all small loan companies licensed under the SLA irrespective of the type(s) of small loan products offered, this change in terminology is appropriate and needed.

(D)

- The words “schedule of charges” are struck and replaced with the words loan rates and fees.” The words “THE CHART” are struck, as are the words “REPRESENTS ILLUSTRATIVE EXAMPLES OF THE COST OF A LOAN TO THE BORROWER.”
- The words “IS GENERAL INFORMATION REGARDING ALL RATES AND FEEES THAT WILL ASSIST YOU IN MAKING YOUR LOAN DECISION” are added. These changes were made consistently with this rule now applying to all small loan companies licensed under the SLA irrespective of the type(s) of small loan products offered.

(E)

- The words “chart” and “must” are struck from this subsection of the prior rule.
- The words “shall consist of two distinctive sections. Each section must” are inserted. These changes are necessary to clean up the prior language of the rule in light of the changes made consistent with having the rule apply to all small loan companies licensed under the SLA irrespective of the type(s) of small loan products offered.

Changes from the Proposed Rule to the Final Rule:

In the second sentence, the word “first” is struck and the word “section” inserted after the word “two.”

Rationale for Change:

Under the original wording of the rule, there was a reference to two main sections that would be included on the sign; however, the rule then provided requirements that appeared to create more than two sections. This has been corrected and clarified.

(E)(1)

The words “14-point” are struck.

Changes from the Proposed Rule for the Final Rule:

The second and third sentences of (E)(1) are struck. The following wording is inserted after the first sentence: “APR is a combination of the interest rate plus the fees charged on your loan. APR is higher than the interest rate because it includes the fees as finance charges.”

Rationale for Change:

Commenters indicated a desire for more information to be provided to consumers regarding the costs of loans, such as providing more information on APR and what is included in that calculation. This change provides more detailed information to consumers for their lending decisions.

(E)(1)(A)

The following is inserted to the current rule: “Below the preceding sentences in bold type the following words shall appear, “Your actual terms and the Annual Percentage Rate (APR) will be determined at the time your application is submitted and will be based on your application and

credit information. Not all applicants will qualify for the lowest rate.” This change is intended to provide more detailed information to consumers for their lending decisions.

(E)(1)(B)

The following is inserted to the current rule: “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 1955 or the Bank Installment Loan Act of 1959 cannot exceed one hundred and seventy-five percent, effective January 1, 2018.” This change is intended to provide more detailed information to consumers for their lending decisions and to make certain consumers are aware of specific changes made to state law regarding small loans effective January 1, 2018.

(E)(2)

- The words “FINANCE CHARGE” are struck.
- The word “FEES” is inserted.
- The words “in 14-point font, “The dollar amount the credit will cost you” are struck.
- The words “A list of all additional fees that you may be charged” is inserted.
- The words “The heading shall be followed with a table containing a list of all fees that a borrower may be charged” are inserted. Because this rule will now pertain to all small loan companies licensed under the SLA irrespective of the type(s) of small loan products offered, these changes to this subsection are appropriate and needed.

Change from Proposed Rule to Final Rule:

The word “additional” that was proposed to be added concerning fees is struck.

Rationale for Change:

Because this section requires a table with a list of all fees to be charged, the word “additional” is unnecessary.

(E)(3), (4) and (5)

Changes from the Proposed Rule for the Final Rule:

Each of these subsections will be struck from the final rule.

Rationale for Change:

Due to the other changes to this rule contained in the original proposed rule, each of these subsections is no longer necessary and it was oversight not to have struck them in the original proposed rule. The provisions of these subsections specified content for a chart that will no longer be required by the final rule.

(F)

Subsection (F) is struck in its entirety. The language of this subsection referred to a chart that will no longer be required by the final rule in light of the changes made to the SLA effective January 1, 2018.

(G)

- Subsection (G) is be re-lettered as subsection (F).
- The word “chart” is struck from the first sentence.
- The words “WITH THIS LENDER” are added to the first sentence.
- The word “and” is struck from the second sentence.

- The words “and email address” are added to the second sentence.

Changes from the Proposed Rule for Final Rule:

The word “name” is struck from the second sentence and replaced with the words “position title.”

Rationale for Change:

Commenters from the industry noted that if the individual name of an employee were required to be included on the signage this could become a cost, confusion, and compliance issue any time there was turnover in personnel for the referenced job position. By changing the requirement to “position title” those concerns are resolved while still providing consumers with an appropriate point-of-contact for complaint issues.

(H)

- Subsection (H) is re-lettered as subsection (G).
- In the first sentence, the word “business” is struck.
- In the first sentence the words “lender”, “licensed and”, “New Mexico”, and “P.O. Box 25101” are inserted.
- In the first sentence the zip code “87505” is corrected to read “87504” and the sentence is ended after that zip code.
- The (now) second sentence has the following words inserted at its beginning: “To report any unresolved problems or complaints, contact the division by”.
- The address for the FID website is also corrected. Each of these changes serves the purposes of clarification and accuracy in order to assure consumers have the proper information and ability to contact the Division.

NMAC 12.18.5:

This rule is repealed effective September 15, 2018. The prior rule dealt with the subject of an annual data report concerning “payday” loans, and lenders offering that specific type of loan product. “Payday” loans were previously defined and regulated under the terms of §58-15-32 through 38 NMSA 1978; however, those statutes were all repealed by HB 347 (effective January 1, 2018). In light of the statutory changes, this rule was made moot and has now been repealed.

NMAC 12.18.6:

This rule is repealed effective September 15, 2018. The prior rule defined a specific type of small loan as a “title loan” and imposed requirements for an annual report to be submitted to the FID by small loan companies making “title” loans. Under the terms of the changes made to the SLA and the Bank Installment Loan Act of 1959 (BILA) by HB 347 (effective January 1, 2018), all such loans are required to meet the same maximum APR, number of installments, and length of term requirements as are all other loans of \$5,000 or less made under either Act; and therefore the requirement for this separate report has been determined to no longer be necessary. In light of the statutory changes, this rule has now been repealed.

NMAC 12.18.7:

This rule was repealed effective September 15, 2018, and replaced the same date with new rule 12.18.7 which is limited in its scope to the terms of the administrative hearing procedures to be utilized for small loan company licensees. The prior rule 12.18.7 contained a provision defining an exemption for certain small loans that did not fit within the SLA or the BILA. With the enactment of the provisions of HB 347 effective January 1, 2018, the exemption provision

became moot and all loans \$5,000 or less must now comply with the terms of the SLA and BILA as amended. The new rule 12.18.7 lays out the administrative hearing procedures to be utilized in all administrative hearings for SLA licensees. These hearing procedures do not differ from the hearing procedures under the prior rule.

NMAC 12.18.8:

This rule is repealed effective September 15, 2018, and replaced with new rule 12.18.8 which establishes legal requirements for the licensing of nonresident lenders. There are no material changes being made to the existing rule other than changing the dollar-amount threshold for regarding small loans covered by the rule from the prior amount of "\$2,500" to the current amount of "\$5,000" in keeping with changes to state law made effective January 1, 2018, under the terms of HB 347. The "repeal and replace" of this rule, as opposed to an "amendment" was done in compliance with rule formatting changes required by the State Records Center.

NMAC 12.18.9:

This is a new rule which is effective September 15, 2018. This new rule defines and imposes requirements on loans identified as "Refund Anticipation Loans" under the SLA and BILA. This is an entirely new rule that is necessitated due to the creation of this newly specified category of small loans effective January 1, 2018, with the enactment of HB 347.

12.18.9.7

Requires the "MANDATORY DISCLOSURE OF LOAN INFORMATION" that will be specific to the "Refund Anticipation Loan" loan product. This new rule establishes a list of specified information that must be provided to consumers including, but not limited to, the definition of what constitutes a "refund anticipation loan," a list of the annual percentage rate and fees the consumers may be charged on such a loan, and the estimated time to which the consumer may receive the proceeds from their anticipated tax refund or credit.

(A)(1)

Changes from Proposed Rule to Final Rule:

New language will be inserted at (A)(1) to read: "a statement that "refund anticipation loan" means a loan that is secured by or that the creditor arranges or expects to be repaid, directly or indirectly, from the proceeds of the consumer's federal or state personal income tax refunds or tax credits, including any sale, assignment or purchase of a tax refund or tax credit at a discount or for a fee". The prior subsections (A)(1), (A)(2) and (A)(3) are then appropriately re-numbered as (A)(2), (A)(3), and (A)(4).

Rationale for Change:

Commenters from the consumer protection community requested the statutory language defining a "refund anticipation loan" be added to this rule in order to better inform consumers about the type of loan product they may be considering. This section of rule is intended to specify information the lender must provide to consumers and the proposed change will ensure that consumers will be provided access to the relevant definition (which is identical to the state statute).

(A)(3)(e)

Changes from the Proposed Rule to the Final Rule:

New subsection (A)(3)(e) has been inserted and reads: "This business is regulated by the 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 (505) 476-4885 or visit the website: www.rld.state.nm.us/financialinstitutions/."

Rationale for Change:

This change provides consumers with appropriate information to contact the state regulator and having this information included in the information to be provided by the lender to consumers considering refund anticipation loans is consistent with the requirements for lenders on all other small loan products.

NMAC 12.18.10:

This is a new rule, which is effective September 15, 2018. New rule 12.18.10 imposes requirements related to the use of electronic media by all small loan company licensees which did not exist under the prior rules.

12.18.10.7

This is the section of the new rule dealing with "MARKETING SITE REQUIREMENTS."

(A)

Changes from the Proposed Rule to the Final Rule:

- In the first sentence of subsection (A), the word "providing" is inserted between the words "for" and "all".
- In the first sentence of subsection (A), after the reference to Subsection A of 12.18.4.8 NMAC, the words "to consumers" are inserted and a period inserted to end the first sentence at that point.
- A second sentence of subsection (A) is inserted reading: "The required disclosures and consumer information shall be easily accessible to consumer to review on a New Mexico specific web page maintained by the small loan company."
- A third sentence of subsection (A) is inserted reading: "The small loan company must ensure active links to the New Mexico specific web page are included on all company marketing sites utilized for loans made to borrowers in New Mexico."
- The remainder of the original proposed wording of subsection (A) is struck.

Rationale for Changes:

These changes are consistent with how the mandatory signage for small loan company licensees is handled in other rules and is intended to ensure consumers in New Mexico will have access to all appropriate information regarding the small loan products they may be considering.

(B)

Change to be made for Final Rule:

At the second sentence of subsection (B), the word "name" will be struck and replaced with the words "position title."

Rationale for Change:

This change is being made consistently with the language of the other rules regarding the information to be provided to consumers who wish to report a problem or complaint with the lender. Using the term “position title” as opposed to requiring the company to publish the actual name of an individual employee who has been assigned as the company’s problem resolution person resolves the potential problems that might occur if there is turnover in that position.

12.18.10.8

This section of the new rule concerns newly defined “BUSINESS SITE REQUIREMENTS” for small lenders.

(D)

Change to be made for Final Rule:

At the second sentence of subsection (D), the word “name” will be struck and replaced with the words “position title.”

Rationale for Change:

Identically to the situation in subsection (B), above, this change is being made consistently with the other proposed rules regarding the information to be provided to consumers who wish to report a problem or complaint with the lender. Using the term “position title” as opposed to requiring the company to publish the actual name of an individual employee who has been assigned as the company’s problem resolution person resolves the potential problems that might occur if there is turnover in that position.

CONCERNING REQUESTS AND SUGGESTIONS SUBMITTED BY MEMBERS OF THE PUBLIC SEEKING THE ADDITION OF NEW RULES FOR THE SMALL LOAN INDUSTRY OR RULES COVERING TOPICS NOT INCLUDED WITHIN THE RECENT PROPOSED (NOW ADOPTED) RULES:

The above-referenced proposed rules changes were originally published by the Division on February 27, 2018. The Division was fortunate to receive a variety of input and valuable suggestions submitted by members of the public, interested organizations, and other government offices during the public comment period on the proposed rules developed by the Division.

Additionally, in writing and in-person during the two public hearings on the proposed rules (April 3rd and May 15th), the Division received a substantial number of recommendations and comments concerning topics involving substantive additions and changes to the rules for licensees under the SLA. For example, a number of individuals and organizations advocated for the Division to add definitions for the terms “loan,” “loan renewal,” or “rollover” (which had not been included within the proposed rules). Recommendations were received from multiple parties to have a new rule provision adopted requiring SLA licensees to provide copies of all consumer brochures and disclosures (and perhaps loan contracts) to borrowers in the chosen language of the borrower. Others argued for the need for rules requiring licensees to provide (and make public) a variety of data regarding numbers of loans made, default rates, and collection activities. While each of these suggestions involves important matters relevant to New Mexico consumers and lenders, each of these topics was also outside of the scope of provisions of the rules proposed by the Division, published, and submitted for public comment. Established

law limits the extent of amendments or changes that may be made to administrative rules by a public regulatory authority from the content of “proposed” rules to the content of final or “adopted” rules. Such amendments or changes to “proposed” rule drafts must be kept within the relevant scope of what an individual reviewing the proposed language should be aware may reasonably develop out of the proposed language and subject matter. In the amendments made to the proposed rules that were ultimately adopted, the Division endeavored to make certain that such changes were limited to only matters within the scope of the original proposals.

The fact that certain recommendations for rules additions and changes received from the public during the comment period on this set of proposed rules were not within the scope of reasonable amendments at this time does NOT mean that rules will not be developed covering the subject matter. In fact, the Division continues to engage in research concerning a number of recommendations received from the public during this rulemaking process. Before any new rules can be adopted by the Division, drafts of proposed rules must be developed and published, and fair opportunity provided for public comment and feedback under the terms of New Mexico law. The Division looks forward to working with all parties who desire to create (and improve upon) fair and effective rules and law concerning our New Mexico financial institutions.