



New Mexico Regulation and Licensing Department

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REGULATORY ALERT

“SMALL LOAN REPORTING AND DISCLOSURE CHANGES”

New Mexico Small Loan Act of 1955 (§58-15-1 NMSA 1978)

New Mexico Bank Installment Loan Act of 1959 (§58-7-1- NMSA 1978)

During the 2019 legislative session, the New Mexico legislature enacted changes to annual reporting and disclosure requirements for all small loan licensees through the passage of House Bill 150 (HB 150). The bill amended some provisions of the New Mexico Small Loan Act of 1955 (SLA) and the New Mexico Bank Installment Loan Act of 1959 (BILA). HB 150 was signed into law by Governor Michelle Lujan Grisham on April 3, 2019, and will become effective on January 1, 2020.

Below is a summary of the changes to be enacted on January 1, 2020:

- The definition of “consumer” is amended and a definition of “make a loan” is added under the SLA.
- Definitions of the terms “consumer”, “make a loan” and “person” are added under the BILA.
- Loans made pursuant to the BILA are required to identify on the loan agreement that such loans are made pursuant to the BILA.
- Concerning the statement required to be provided to borrowers disclosing the terms and conditions of a loan made under the SLA, the requirement that such statement be provided “in English or Spanish as requested by the borrower” has been removed from the statute.
- The loan documents for all loans made pursuant to the BILA will be required to include the following disclosures:
 - Amount of the Loan
 - Schedule of Payments
 - Name and Address of Lender
 - Principal Amount
 - Annual Percentage Rate (APR)

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- All loan agreements made pursuant to the SLA or BILA must include a “Right of Rescission” clause providing borrowers with the right to rescind the loan. For loans made in-person (at a physical location), the right of rescission runs until the close of business New Mexico time on the day the loan was made. If the loan was made online, the right to rescind extends until midnight New Mexico time on the first business day conducted by the lender following the date of execution of the loan agreement.
- Attorney fees may not be charged or collected unless the note or other contract has been submitted in good faith to an attorney for collection after the lender has made a diligent and good faith effort to collect and has failed.
- The SLA and the BILA are amended to prohibit lenders from charging more than the actual cost of any insurance product offered. The insurance company offering the policy must be licensed in New Mexico and cannot charge a rate higher than approved by the Superintendent of Insurance.
- All SLA licensees are required, upon request from the borrower, to provide to the borrower copies of all payment receipts. These documents may be provided via hard copy, or they may be delivered by text message or email if requested to do so in writing by the borrower. Licensees will be required to maintain a copy of each receipt as part of the licensee’s records.
- All SLA licensees, upon request of the borrower, are required to give or forward borrowers copies of all loan agreements, copies of receipts, and loan histories to include the following:
 - Payment history including dates and payment amounts.
 - Total amount unpaid pursuant to each contract.
- All SLA licensees are required to retain loan agreements, copies of receipts and loan histories for seven (7) years from the date of the loan origination or loan payoff, whichever is later.
- The SLA and BILA are amended to clarify that in the event of insufficient funds to pay a check or other type of debit on the date of presentment by a lender, the lender may not present a check or debit authorization more than one additional time per installment payment.
- Any rollover, renewal, refinance or modification of an existing loan shall constitute a new loan and require new disclosures with the exception of a modification without any additional cost to the consumer.
- The SLA is amended to state that any loan in violation of §58-15-3 (A) NMSA 1978, §58-15-3 (D) NMSA 1978, §58-15-17 NMSA 1978, or §58-15-20 NMSA 1978 is void and that the lender has no right to collect, receive or retain any principal, interest or charges whatsoever.
- The BILA is amended to state that any loan in violation of §58-7-6 NMSA 1978, or §58-7-7 NMSA 1978 is void and that the lender has no right to collect, receive or retain any principal, interest or charges whatsoever. Lenders may not collect principal if §58-7-6 NMSA 1978 or §58-7-7 NMSA 1978 have been knowingly violated. Principal is also not collectable if the lender has violated the §58-15-3 (A) NMSA 1978 of the SLA.

- Any violation of the SLA or BILA that constitutes an unfair or deceptive practice or an unconscionable trade practice is actionable pursuant to the Unfair Trade Practices Act (*removing the current language that requires such a violation to involve a false or misleading oral or written representation knowingly made in the extension of credit that may, tends to or does deceive or mislead any person to whom the extension of credit is made*).
- Significant amendments were made to the content of the annual report required to be submitted by each SLA licensee for all loan transactions entered into on January 1, 2020, or later. Reports will be due no later than April 15th of the following calendar year. The required reporting data will include the following:
 1. A description of each loan product offered by the licensee, including:
 - a. Whether the loan product was secured or unsecured;
 - b. Whether the loan product was made pursuant to the New Mexico Small Loan Act of 1955 or the New Mexico Bank Installment Loan Act of 1959;
 - c. The total dollar amount of principal loaned for that product;
 - d. The percentage of the total dollar amount of all principal for that product that was repaid;
 - e. The total number of individual borrowers who took out this type of loan product;
 2. The total number of loan transactions entered into for each loan product in the following amounts:
 - a. Five hundred dollars (\$500) or less;
 - b. Five hundred one dollars (\$501) to one thousand dollars (\$1,000);
 - c. One thousand one dollars (\$1,001) to three thousand dollars (\$3,000);
 - d. Three thousand one dollars (\$3,001) to five thousand dollars (\$5,000);
 3. For each loan product, the number of loans made and the total dollar amount of interest and fees charged on the contracts for loans made within the following categories of annual percentage rate calculated pursuant to 12 CFR Part 1026, known as "Regulation Z":
 - a. Less than or equal to thirty-six percent;
 - b. More than thirty-six percent through one hundred percent;
 - c. More than one hundred percent through one hundred fifty percent; and
 - d. More than one hundred fifty percent through one hundred seventy-five percent;
 4. For each loan product, the following aggregate amounts of fees and interest:
 - a. A list of each fee charged by the lender and a description of each fee product or type, including fees charged for loan origination and credit insurance;
 - b. The total dollar amount of each fee product charged by the lender and paid by the borrower;
 - c. The total dollar amount of interest charged by the lender and paid by the borrower;

5. For each loan product:
 - a. The number of loans for which the original term of the loan was:
 - i. Less than one hundred twenty days;
 - ii. Between one hundred twenty and three hundred sixty-five days;
 - iii. Between three hundred sixty-five days and seven hundred thirty-one days;
 - iv. Between seven hundred thirty-one days and five years; and
 - v. Longer than five years;
 - b. For each item set forth in Subparagraph (a) of this paragraph, the average actual repayment time for the given loan product and loan term; and
 - c. For each item set forth in Subparagraph (a) of this paragraph, the number of loans for which payments were due:
 - i. Every two weeks;
 - ii. Every four weeks; and
 - iii. Monthly;
6. The number of borrowers who took out one or two loans with the lender in the previous calendar year, and the percentage of all borrowers who took out only one or two loans with the lender in the previous calendar year;
7. The number of borrowers who took out three or more loans with the lender in the previous calendar year, and the percentage of all borrowers who took out three or more loans with the lender in the previous calendar year;
8. For each loan product, the number of loans that have been repaid in full without an extension, renewal, refinance, rollover or new loan within thirty days of repaying that loan, and for each loan product, the percentage of all borrowers who have repaid their loans in full without an extension, renewal, refinance, rollover or new loan within thirty days of repaying that loan;
9. For each loan product, the number of borrowers who extended, renewed, refinanced or rolled over their loans prior to or at the same time as paying their loan balance in full, or took out a new loan within thirty days of repaying that loan, and for each loan product, the percentage of all borrowers who extended, renewed, refinanced or rolled over their loans prior to or at the same time as paying the loan balance in full, or took out a new loan within thirty days of repaying that loan;
10. For each loan product, the total number of loans for which a late payment fee was charged and the percentage of the total loans for which a late payment fee was charged;
11. For each loan product, the total number of loans for which a late payment fee was charged more than once over the term of the contract, and the percentage of the total loans for which a late payment fee was charged more than once over the term of the contract;
12. For each loan product, the number of loans for which a borrower has defaulted on a loan, and for each loan product, the percentage of total loans of that product for which the borrower defaulted on a loan;

13. For each loan product, the dollar amount of loan principal and accrued interest that was charged-off or written-off, and the number of borrowers for which the lender charged-off or wrote-off loan principal and accrued interest;
14. The number of loans and percentage of all borrowers the lender filed action against for default;
15. The total number of loans secured by a motor vehicle and the number of those loans for which the motor vehicle was repossessed;
16. The total number of loans secured by non-motor vehicle personal property and the number of those loans for which the non-motor vehicle personal property was repossessed;
17. The total number and percentage of borrowers of all loan products whose sources of income, as provided by borrowers in the loan origination process, included a means-tested public benefit as defined by 8 U.S.C. Section 1613(c).
18. The total number and percentage of borrowers of all loan products who are aged sixty-five or older;
19. The total number of loans of all loan products that were made to borrowers in each county in New Mexico;
20. The percentage of all borrowers who took out a refund anticipation loan who were eligible for a federal earned income tax credit”.