

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, 09/15/2018]

12.18.9.2 SCOPE: Loan companies conducting refund anticipation loans in the state of New Mexico.
[12.18.9.2 NMAC - N, 09/15/2018]

12.18.9.3 STATUTORY AUTHORITY: Section 58-15-11 NMSA 1978.
[12.18.9.3 NMAC - N, 09/15/2018]

12.18.9.4 DURATION: Permanent.
[12.18.9.4 NMAC - N, 09/15/2018]

12.18.9.5 EFFECTIVE DATE: September 15, 2018, unless a later date is cited at the end of a section.
[12.18.9.5 NMAC - N, 09/15/2018]

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, 09/15/2018]

12.18.9.7 DEFINITIONS: [RESERVED]
[12.18.9.7 NMAC - N, 09/15/2018]

12.18.9.8 MANDATORY DISCLOSURE OF LOAN INFORMATION: All small loan companies engaged in the business of making refund anticipation loans must provide a form to consumers that includes the following:

- A.** a statement that “refund anticipation loan” means a loan that is secured by or that the creditor arranges or expects to be repaid, directly or indirectly, from the proceeds of the consumer's federal or state personal income tax refunds or tax credits, including any sale, assignment or purchase of a tax refund or tax credit at a discount or for a fee;
- B.** a list of the annual percentage rate and all fees that the borrower may be charged upon entering the refund anticipation loan agreement;
- C.** the estimated time to which the consumer may receive the proceeds from their anticipated tax refund or tax credit; and
- D.** the following statement in at least 12-point bold type:
 - (1)** This agreement is considered to be a loan and not your actual tax refund or tax credit. You are borrowing money against your anticipated tax return.
 - (2)** Neither the internal revenue service (IRS) nor the New Mexico taxation and revenue department guarantees that you be paid the full anticipated amount of a tax refund or tax credit, nor do they guarantee that a tax refund or tax credit will be deposited into your bank account or mailed on a specific date.
 - (3)** You are responsible for the full repayment of this refund anticipation loan and for the payment of the total interest, fees, and charges incurred.
 - (4)** Prior to executing a refund anticipation loan agreement, a small loan licensee shall require the borrower to provide a hand written or electronic signature acknowledging that the borrower understands the all required disclosures and has received a copy of the required disclosure. A copy of the acknowledgment form must be permanently kept with the loan records.
 - (5)** This business is licensed and regulated by the New Mexico Regulation and Licensing Department, Financial Institutions Division, P.O. Box 25101, 2550 Cerrillos Road, Santa Fe, New Mexico 87504. To report any unresolved problems or complaints, contact the division by telephone at (505) 476-4885 or visit the website: www.rld.state.nm.us/financial_institutions/.

[12.18.9.8 NMAC - N, 09/15/2018]

12.18.9.9 PROHIBITED ACTS: All small loan licensees engaged in the business of making refund anticipation loans shall not:

- A.** directly or indirectly represent a refund anticipation loan as a refund or tax credit;
- B.** require a borrower to enter into a loan agreement in order to complete a tax return;
- C.** 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 of Loan Information;
- D.** 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; and
- E.** withhold from a consumer, or from a dependent of a consumer, original personal identification documents.

[12.18.9.9 NMAC - N, 09/15/2018]

HISTORY of 12.18.9 NMAC: [RESERVED]