**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 list of the annual percentage rate and all fees that the borrower may be charged upon entering the refund anticipation loan agreement;

 **(2)** the estimated time to which the consumer may receive the proceeds from their anticipated tax refund or tax credit; and

 **(3)** 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.

[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]

**HISTORY of 12.18.9 NMAC: [RESERVED]**