**New Mexico Register / Volume XVIII, Number 20 / October 31, 2007**

**TITLE 12** **TRADE, COMMERCE AND BANKING**

**CHAPTER 18 LOAN COMPANIES**

**PART 7** **TERMS AND CONDITIONS OF PAYDAY LOAN 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, 11/01/07]

**12.18.7.2 SCOPE:** Small loan licensees conducting payday loan business in the state of New Mexico.

[12.18.7.2 NMAC - Rp, 12.18.7.2 NMAC, 11/01/07]

**12.18.7.3 STATUTORY AUTHORITY:** Section 58-15-11 NMSA 1978.

[12.18.7.3 NMAC - Rp, 12.18.7.3 NMAC, 11/01/07]

**12.18.7.4 DURATION:** Permanent.

[12.18.7.4 NMAC - Rp, 12.18.7.4 NMAC, 11/01/07]

**12.18.7.5 EFFECTIVE DATE:** November 1, 2007 unless a later date is cited at the end of a section.

[12.18.7.5 NMAC - Rp, 12.18.7.5 NMAC, 11/01/07]

**12.18.7.6 OBJECTIVE:** The objective of this part is to establish regulations governing the conduct of small loan licensees who provide payday loan products.

[12.18.7.6 NMAC - Rp, 12.18.7.6 NMAC, 11/01/07]

**12.18.7.7 DEFINITIONS:** [RESERVED]

[12.18.7.7 NMAC - Rp, 12.18.7.7 NMAC, 11/01/07]

**12.18.7.8 EXEMPTIONS:** The exemption from the New Mexico Small Loan Act of 1955 provided by Section 58-15-3B shall not apply to a loan or line of credit in excess of two thousand five hundred dollars ($2,500) if the borrower, or anyone acting for the benefit of the borrower, provides, as a condition of the loan, a debit authorization, draft authorization, wage assignment or a postdated check. 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 post dated checks, any such checks that have not been deposited shall be returned upon the written request of the person providing such checks.

[12.18.7.8 NMAC - N, 11/01/07]

**12.18.7.9 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.

[12.18.7.9 NMAC - N, 11/01/07]

**12.18.7.10 PROOF OF GROSS MONTHLY INCOME:** Any licensee who makes a payday loan as defined in Section 58-15-2H shall retain a copy of the documentation used to determine the consumer’s gross monthly income as required by Section 58-15-32A.

[12.18.7.10 NMAC - Rp, 12.18.7.8 NMAC, 11/01/07]

**12.18.7.11 CALCULATION OF ADMINISTRATIVE FEES FOR PAYDAY LOANS:** The administrative fee of fifteen dollars and fifty cents ($15.50) per one hundred dollars ($100) of principal permitted by Section 58-15-33B shall be pro rated for principal amounts not evenly divisible by 100. The following chart exemplifies the administrative fee permitted on loans from $100 to $2,500 in $5.00 increments.

|  |  |
| --- | --- |
| Principal Amount  | Administrative Fee  |
| 100 | 15.5 |
| 105 | 16.27 |
| 110 | 17.05 |
| 115 | 17.82 |
| 120 | 18.6 |
| 125 | 19.37 |
| 130 | 20.15 |
| 135 | 20.92 |
| 140 | 21.7 |
| 145 | 22.47 |
| 150 | 23.25 |
| 155 | 24.02 |
| 160 | 24.8 |
| 165 | 25.57 |
| 170 | 26.35 |
| 175 | 27.12 |
| 180 | 27.9 |
| 185 | 28.67 |
| 190 | 29.45 |
| 195 | 30.22 |
| 200 | 31 |
| 205 | 31.77 |
| 210 | 32.55 |
| 215 | 33.32 |
| 220 | 34.1 |
| 225 | 34.87 |
| 230 | 35.65 |
| 235 | 36.42 |
| 240 | 37.2 |
| 245 | 37.97 |
| 250 | 38.75 |
| 255 | 39.52 |
| 260 | 40.3 |
| 265 | 41.07 |
| 270 | 41.85 |
| 275 | 42.62 |
| 280 | 43.4 |
| 285 | 44.17 |
| 290 | 44.95 |
| 295 | 45.72 |
| 300 | 46.5 |
| 305 | 47.27 |
| 310 | 48.05 |
| 315 | 48.82 |
| 320 | 49.6 |
| 325 | 50.37 |
| 330 | 51.15 |
| 335 | 51.92 |
| 340 | 52.7 |
| 345 | 53.47 |
| 350 | 54.25 |
| 355 | 55.02 |
| 360 | 55.8 |
| 365 | 56.57 |
| 370 | 57.35 |
| 375 | 58.12 |
| 380 | 58.9 |
| 385 | 59.67 |
| 390 | 60.45 |
| 395 | 61.22 |
| 400 | 62 |
| 405 | 62.77 |
| 410 | 63.55 |
| 415 | 64.32 |
| 420 | 65.1 |
| 425 | 65.87 |
| 430 | 66.65 |
| 435 | 67.42 |
| 440 | 68.2 |
| 445 | 68.97 |
| 450 | 69.75 |
| 455 | 70.52 |
| 460 | 71.3 |
| 465 | 72.07 |
| 470 | 72.85 |
| 475 | 73.62 |
| 480 | 74.4 |
| 485 | 75.17 |
| 490 | 75.95 |
| 495 | 76.72 |
| 500 | 77.5 |
| 505 | 78.27 |
| 510 | 79.05 |
| 515 | 79.82 |
| 520 | 80.6 |
| 525 | 81.37 |
| 530 | 82.15 |
| 535 | 82.92 |
| 540 | 83.7 |
| 545 | 84.47 |
| 550 | 85.25 |
| 555 | 86.02 |
| 560 | 86.8 |
| 565 | 87.57 |
| 570 | 88.35 |
| 575 | 89.12 |
| 580 | 89.9 |
| 585 | 90.67 |
| 590 | 91.45 |
| 595 | 92.22 |
| 600 | 93 |
| 605 | 93.77 |
| 610 | 94.55 |
| 615 | 95.32 |
| 620 | 96.1 |
| 625 | 96.87 |
| 630 | 97.65 |
| 635 | 98.42 |
| 640 | 99.2 |
| 645 | 99.97 |
| 650 | 100.75 |
| 655 | 101.52 |
| 660 | 102.3 |
| 665 | 103.07 |
| 670 | 103.85 |
| 675 | 104.62 |
| 680 | 105.4 |
| 685 | 106.17 |
| 690 | 106.95 |
| 695 | 107.72 |
| 700 | 108.5 |
| 705 | 109.27 |
| 710 | 110.05 |
| 715 | 110.82 |
| 720 | 111.6 |
| 725 | 112.37 |
| 730 | 113.15 |
| 735 | 113.92 |
| 740 | 114.7 |
| 745 | 115.47 |
| 750 | 116.25 |
| 755 | 117.02 |
| 760 | 117.8 |
| 765 | 118.57 |
| 770 | 119.35 |
| 775 | 120.12 |
| 780 | 120.9 |
| 785 | 121.67 |
| 790 | 122.45 |
| 795 | 123.22 |
| 800 | 124 |
| 805 | 124.77 |
| 810 | 125.55 |
| 815 | 126.32 |
| 820 | 127.1 |
| 825 | 127.87 |
| 830 | 128.65 |
| 835 | 129.42 |
| 840 | 130.2 |
| 845 | 130.97 |
| 850 | 131.75 |
| 855 | 132.52 |
| 860 | 133.3 |
| 865 | 134.07 |
| 870 | 134.85 |
| 875 | 135.62 |
| 880 | 136.4 |
| 885 | 137.17 |
| 890 | 137.95 |
| 895 | 138.72 |
| 900 | 139.5 |
| 905 | 140.27 |
| 910 | 141.05 |
| 915 | 141.82 |
| 920 | 142.6 |
| 925 | 143.37 |
| 930 | 144.15 |
| 935 | 144.92 |
| 940 | 145.7 |
| 945 | 146.47 |
| 950 | 147.25 |
| 955 | 148.02 |
| 960 | 148.8 |
| 965 | 149.57 |
| 970 | 150.35 |
| 975 | 151.12 |
| 980 | 151.9 |
| 985 | 152.67 |
| 990 | 153.45 |
| 995 | 154.22 |
| 1000 | 155 |
| 1005 | 155.77 |
| 1010 | 156.55 |
| 1015 | 157.32 |
| 1020 | 158.1 |
| 1025 | 158.87 |
| 1030 | 159.65 |
| 1035 | 160.42 |
| 1040 | 161.2 |
| 1045 | 161.97 |
| 1050 | 162.75 |
| 1055 | 163.52 |
| 1060 | 164.3 |
| 1065 | 165.07 |
| 1070 | 165.85 |
| 1075 | 166.62 |
| 1080 | 167.4 |
| 1085 | 168.17 |
| 1090 | 168.95 |
| 1095 | 169.72 |
| 1100 | 170.5 |
| 1105 | 171.27 |
| 1110 | 172.05 |
| 1115 | 172.82 |
| 1120 | 173.6 |
| 1125 | 174.37 |
| 1130 | 175.15 |
| 1135 | 175.92 |
| 1140 | 176.7 |
| 1145 | 177.47 |
| 1150 | 178.25 |
| 1155 | 179.02 |
| 1160 | 179.8 |
| 1165 | 180.57 |
| 1170 | 181.35 |
| 1175 | 182.12 |
| 1180 | 182.9 |
| 1185 | 183.67 |
| 1190 | 184.45 |
| 1195 | 185.22 |
| 1200 | 186 |
| 1205 | 186.77 |
| 1210 | 187.55 |
| 1215 | 188.32 |
| 1220 | 189.1 |
| 1225 | 189.87 |
| 1230 | 190.65 |
| 1235 | 191.42 |
| 1240 | 192.2 |
| 1245 | 192.97 |
| 1250 | 193.75 |
| 1255 | 194.52 |
| 1260 | 195.3 |
| 1265 | 196.07 |
| 1270 | 196.85 |
| 1275 | 197.62 |
| 1280 | 198.4 |
| 1285 | 199.17 |
| 1290 | 199.95 |
| 1295 | 200.72 |
| 1300 | 201.5 |
| 1305 | 202.27 |
| 1310 | 203.05 |
| 1315 | 203.82 |
| 1320 | 204.6 |
| 1325 | 205.37 |
| 1330 | 206.15 |
| 1335 | 206.92 |
| 1340 | 207.7 |
| 1345 | 208.47 |
| 1350 | 209.25 |
| 1355 | 210.02 |
| 1360 | 210.8 |
| 1365 | 211.57 |
| 1370 | 212.35 |
| 1375 | 213.12 |
| 1380 | 213.9 |
| 1385 | 214.67 |
| 1390 | 215.45 |
| 1395 | 216.22 |
| 1400 | 217 |
| 1405 | 217.77 |
| 1410 | 218.55 |
| 1415 | 219.32 |
| 1420 | 220.1 |
| 1425 | 220.87 |
| 1430 | 221.65 |
| 1435 | 222.42 |
| 1440 | 223.2 |
| 1445 | 223.97 |
| 1450 | 224.75 |
| 1455 | 225.52 |
| 1460 | 226.3 |
| 1465 | 227.07 |
| 1470 | 227.85 |
| 1475 | 228.62 |
| 1480 | 229.4 |
| 1485 | 230.17 |
| 1490 | 230.95 |
| 1495 | 231.72 |
| 1500 | 232.5 |
| 1505 | 233.27 |
| 1510 | 234.05 |
| 1515 | 234.82 |
| 1520 | 235.6 |
| 1525 | 236.37 |
| 1530 | 237.15 |
| 1535 | 237.92 |
| 1540 | 238.7 |
| 1545 | 239.47 |
| 1550 | 240.25 |
| 1555 | 241.02 |
| 1560 | 241.8 |
| 1565 | 242.57 |
| 1570 | 243.35 |
| 1575 | 244.12 |
| 1580 | 244.9 |
| 1585 | 245.67 |
| 1590 | 246.45 |
| 1595 | 247.22 |
| 1600 | 248 |
| 1605 | 248.77 |
| 1610 | 249.55 |
| 1615 | 250.32 |
| 1620 | 251.1 |
| 1625 | 251.87 |
| 1630 | 252.65 |
| 1635 | 253.42 |
| 1640 | 254.2 |
| 1645 | 254.97 |
| 1650 | 255.75 |
| 1655 | 256.52 |
| 1660 | 257.3 |
| 1665 | 258.07 |
| 1670 | 258.85 |
| 1675 | 259.62 |
| 1680 | 260.4 |
| 1685 | 261.17 |
| 1690 | 261.95 |
| 1695 | 262.72 |
| 1700 | 263.5 |
| 1705 | 264.27 |
| 1710 | 265.05 |
| 1715 | 265.82 |
| 1720 | 266.6 |
| 1725 | 267.37 |
| 1730 | 268.15 |
| 1735 | 268.92 |
| 1740 | 269.7 |
| 1745 | 270.47 |
| 1750 | 271.25 |
| 1755 | 272.02 |
| 1760 | 272.8 |
| 1765 | 273.57 |
| 1770 | 274.35 |
| 1775 | 275.12 |
| 1780 | 275.9 |
| 1785 | 276.67 |
| 1790 | 277.45 |
| 1795 | 278.22 |
| 1800 | 279 |
| 1805 | 279.77 |
| 1810 | 280.55 |
| 1815 | 281.32 |
| 1820 | 282.1 |
| 1825 | 282.87 |
| 1830 | 283.65 |
| 1835 | 284.42 |
| 1840 | 285.2 |
| 1845 | 285.97 |
| 1850 | 286.75 |
| 1855 | 287.52 |
| 1860 | 288.3 |
| 1865 | 289.07 |
| 1870 | 289.85 |
| 1875 | 290.62 |
| 1880 | 291.4 |
| 1885 | 292.17 |
| 1890 | 292.95 |
| 1895 | 293.72 |
| 1900 | 294.5 |
| 1905 | 295.27 |
| 1910 | 296.05 |
| 1915 | 296.82 |
| 1920 | 297.6 |
| 1925 | 298.37 |
| 1930 | 299.15 |
| 1935 | 299.92 |
| 1940 | 300.7 |
| 1945 | 301.47 |
| 1950 | 302.25 |
| 1955 | 303.02 |
| 1960 | 303.8 |
| 1965 | 304.57 |
| 1970 | 305.35 |
| 1975 | 306.12 |
| 1980 | 306.9 |
| 1985 | 307.67 |
| 1990 | 308.45 |
| 1995 | 309.22 |
| 2000 | 310 |
| 2005 | 310.77 |
| 2010 | 311.55 |
| 2015 | 312.32 |
| 2020 | 313.1 |
| 2025 | 313.87 |
| 2030 | 314.65 |
| 2035 | 315.42 |
| 2040 | 316.2 |
| 2045 | 316.97 |
| 2050 | 317.75 |
| 2055 | 318.52 |
| 2060 | 319.3 |
| 2065 | 320.07 |
| 2070 | 320.85 |
| 2075 | 321.62 |
| 2080 | 322.4 |
| 2085 | 323.17 |
| 2090 | 323.95 |
| 2095 | 324.72 |
| 2100 | 325.5 |
| 2105 | 326.27 |
| 2110 | 327.05 |
| 2115 | 327.82 |
| 2120 | 328.6 |
| 2125 | 329.37 |
| 2130 | 330.15 |
| 2135 | 330.92 |
| 2140 | 331.7 |
| 2145 | 332.47 |
| 2150 | 333.25 |
| 2155 | 334.02 |
| 2160 | 334.8 |
| 2165 | 335.57 |
| 2170 | 336.35 |
| 2175 | 337.12 |
| 2180 | 337.9 |
| 2185 | 338.67 |
| 2190 | 339.45 |
| 2195 | 340.22 |
| 2200 | 341 |
| 2205 | 341.77 |
| 2210 | 342.55 |
| 2215 | 343.32 |
| 2220 | 344.1 |
| 2225 | 344.87 |
| 2230 | 345.65 |
| 2235 | 346.42 |
| 2240 | 347.2 |
| 2245 | 347.97 |
| 2250 | 348.75 |
| 2255 | 349.52 |
| 2260 | 350.3 |
| 2265 | 351.07 |
| 2270 | 351.85 |
| 2275 | 352.62 |
| 2280 | 353.4 |
| 2285 | 354.17 |
| 2290 | 354.95 |
| 2295 | 355.72 |
| 2300 | 356.5 |
| 2305 | 357.27 |
| 2310 | 358.05 |
| 2315 | 358.82 |
| 2320 | 359.6 |
| 2325 | 360.37 |
| 2330 | 361.15 |
| 2335 | 361.92 |
| 2340 | 362.7 |
| 2345 | 363.47 |
| 2350 | 364.25 |
| 2355 | 365.02 |
| 2360 | 365.8 |
| 2365 | 366.57 |
| 2370 | 367.35 |
| 2375 | 368.12 |
| 2380 | 368.9 |
| 2385 | 369.67 |
| 2390 | 370.45 |
| 2395 | 371.22 |
| 2400 | 372 |
| 2405 | 372.77 |
| 2410 | 373.55 |
| 2415 | 374.32 |
| 2420 | 375.1 |
| 2425 | 375.87 |
| 2430 | 376.65 |
| 2435 | 377.42 |
| 2440 | 378.2 |
| 2445 | 378.97 |
| 2450 | 379.75 |
| 2455 | 380.52 |
| 2460 | 381.3 |
| 2465 | 382.07 |
| 2470 | 382.85 |
| 2475 | 383.62 |
| 2480 | 384.4 |
| 2485 | 385.17 |
| 2490 | 385.95 |
| 2495 | 386.72 |
| 2500 | 387.5 |

[12.18.7.11 NMAC - Rp, 12.18.7.8 NMAC, 11/01/07]

**12.18.7.12 PAYDAY LOAN PRODUCTS - PROHIBITED ACTS:**

 **A.** The term “debt authorizations” as used in Section 58-15-34J includes debit authorizations and draft authorizations.

 **B.** A licensee shall not deposit a post dated check before the date stated on the face of the check.

[12.18.7.12 NMAC - Rp, 12.18.7.10 NMAC, 11/01/07]

**12.18.7.13** **DISCLOSURE OF CONSUMER’S RIGHT TO PAYMENT PLAN:** Licensees who offer payday loan products shall provide the consumer with a notice of the consumer’s right to enter into a payment plan at the time such payday loan is made as provided by Section 58-15-35. Such notice shall be on a form prescribed by the director. The licensee shall give a copy of the form to the consumer and retain a copy in the licensee’s file. In addition to providing the written form to the consumer, the licensee shall read the notice orally to the consumer in either English or Spanish at the option of the consumer.

[12.18.7.13 NMAC - Rp, 12.18.7.12 NMAC, 11/01/07]

**12.18.7.14 PAYDAY LOAN VERIFICATION:** Before entering into a payday loan agreement, a licensee shall:

 **A.** conduct a search on the database of a certified consumer reporting service to determine the consumer’s eligibility for a payday loan; the search shall be based on the consumer’s date of birth and one of the following: social security number; alien registration number; or individual tax identification number (ITIN);

 **B.** if the consumer is eligible for a payday loan, enter all of the required information necessary to have the payday loan registered on the database of the certified consumer reporting service;

 **C.** if the certified consumer reporting service indicates that the proposed payday loan is eligible for funding, the licensee shall record a transaction identification number, generated by the certified consumer reporting service, on the loan document before entering into the payday loan.

[12.18.7.14 NMAC - Rp, 12.18.7.14 NMAC, 11/01/07]

**12.18.7.15 MAINTENANCE OF PAYDAY LOAN INFORMATION:**

 **A.** Licensees who provide payday loan products shall immediately update all information that they have entered on the database of the certified consumer reporting service, if they become aware of any changes to information regarding the transaction or the identity of the borrower.

 **B.** Licensees who provide payday loan products shall immediately update the information stored on the database of the certified consumer reporting service whenever:

(1) a payment on the payday loan has been made, including the date on which the payment check was deposited by the licensee or the date the ACH was submitted; if the payment completes the consumer’s payment obligations under the payday loan product, the licensee shall indicate that the transaction is closed;

(2) a consumer’s check or ACH submission is returned to the lender as not collected and shall specify the return date; in addition, the licensee shall update the status of the payday loan product to change the status of the loan to “open” or “outstanding” if such status has changed.

 **C.** If a consumer elects to rescind a payday loan agreement pursuant to Section 58-15-32C, the licensee shall immediately update the database of the certified consumer reporting service to indicate that the advance was rescinded, no fees were charged to the consumer and that the loan status is changed to “closed.”

[12.18.7.15 NMAC - Rp, 12.18.7.14 NMAC, 11/01/07]

**12.18.7.16 INFORMATION REGARDING CONSUMER INELIGIBILITY:** If an inquiry to the certified consumer reporting service results in a consumer being deemed ineligible for a proposed payday loan, the certified consumer reporting service shall provide notification to the licensee stating that the consumer is ineligible for such loan and further providing contact information regarding the consumer reporting service to enable the consumer to directly contact the consumer reporting service.

[12.18.7.16 NMAC - N, 11/01/07]

**HISTORY OF 12.18.7 NMAC:** [RESERVED]