

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 15 FINANCIAL INSTITUTIONS - GENERAL
PART 3 HOME LOAN PROTECTION ACT - GENERAL PROVISIONS

12.15.3.1 ISSUING AGENCY: Financial Institutions Division of the Regulation and Licensing Department.
[12.15.3.1 NMAC - N, 01/23/2004]

12.15.3.2 SCOPE: All persons subject to the Home Loan Protection Act, Sections 58-21A-1 to -14 NMSA 1978 (2003, as amended through 2004) (“Act”).
[12.15.3.2 NMAC - N, 01/23/2004, A, 06/30/2004]

12.15.3.3 STATUTORY AUTHORITY: Section 58-21A-13 NMSA 1978.
[12.15.3.3 NMAC - N, 01/23/2004]

12.15.3.4 DURATION: Permanent.
[12.15.3.4 NMAC - N, 01/23/2004]

12.15.3.5 EFFECTIVE DATE: January 23, 2004, unless a later date is cited at the end of a section.
[12.15.3.5 NMAC - N, 01/23/2004]

12.15.3.6 OBJECTIVE: The objective of this rule is to clarify and interpret certain terms used in the act.
[12.15.3.6 NMAC - N, 01/23/2004]

12.15.3.7 DEFINITIONS: For purposes of this rule, the definitions set forth in the act shall apply unless otherwise noted.

A. “Grossed up income” means income that is not taxable by the federal government and has been increased to reflect the amount of tax savings attributed to this type of income. The maximum amount of grossed up income allowable is twenty-five percent, but could be less based on the tax savings of the borrower. (Example: Non-taxable income is \$1000.00 per month. Assuming a tax savings of 25%, the allowable grossed up income would be \$1250.00 per month.)

B. “Scheduled long-term monthly debt payments” means the monthly payments of all installment debts, revolving charge accounts, open accounts and lines of credit that would be used to determine a borrower’s ability to repay per the current underwriting guidelines of the federal housing administration (FHA), the federal national mortgage association (FNMA), the federal home loan mortgage corporation (FHLMC) or the department of veteran’s affairs (VA).
[12.16.3.7 NMAC - N, 01/23/2004; A, 06/01/10]

12.15.3.8 ANNUAL PERCENTAGE RATE: The phrase “annual percentage rate” as used in Section 58-21A-3 (C) and (G) NMSA 1978, has the same meaning as the term “annual percentage rate” defined in 15 U.S.C. Section 1606(a).
[12.15.3.8 NMAC - N, 01/23/2004; A, 06/01/10]

12.15.3.9 PUBLISHED ANNUAL YIELD ON CONVENTIONAL MORTGAGES: The phrases “most recently published annual yield on conventional mortgages published by the board of governors of the federal reserve system as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor,” as used in Section 58-21A-3 (F) NMSA 1978, and “conventional mortgage rate” as used in Section 58-21A-3 (C) (F) and (G) (1) NMSA 1978, refer to the conventional mortgage index published in the federal reserve “selected interest rates” (statistical release H-15). The creditor must use the most recently published weekly yield immediately preceding the 15th.
[12.15.3.9 NMAC - N, 01/23/2004, A, 06/30/2004; A, 06/01/10]

12.15.3.10 CONFORMING LOAN SIZE LIMIT: The “conforming loan size limit for a single-family dwelling established by the federal national mortgage association,” referred to in Section 58-21A-3 (J) NMSA 1978, is the maximum original principal obligation set forth in, and from time to time adjusted, according to the provisions

of 12 U.S.C. Section 1454(a)(2), applicable to first mortgages. “The federal national mortgage association” refers to fannie mae, the corporation initially organized pursuant to 12 USC 1716(b).
[12.15.3.10 NMAC - N, 01/23/2004; A, 06/01/10]

12.15.3.11 POINTS AND FEES: The categories listed under the definition of “points and fees” in Section 58-21A-3 (M) NMSA 1978, are not exclusive.
[12.15.3.11 NMAC - N, 01/23/2004; A, 06/01/10]

12.15.3.12 RATE THRESHOLD: The phrase “comparable periods of maturity”, as used in Section 58-21A-3 (N) NMSA 1978, refers to the “treasury constant maturities” published in the federal reserve “selected interest rates” (statistical release H-15).

A. Creditors must use the yield corresponding to the constant maturity that is closest to the loan’s maturity or the lower yield if the loan’s maturity is midway between constant maturities published in the statistical release.

B. If the 15th day of the month immediately preceding the month in which the loan is made is not a business day, the creditor must use the yield calculated as of the business day immediately preceding the 15th.

C. A loan is considered “made,” within the meaning of Section 58-21A-3 (N), NMSA 1978, when the consumer becomes contractually obligated on a credit transaction.

D. When calculating the interest rate for adjustable rate loans, the creditor shall not use any introductory rate. The interest rate will be based on the loan's disclosed index plus the margin, which is the fully indexed rate, at the time the loan is made. As an example, if the index is 2% and the margin is 3% for a first lien mortgage, the interest rate is 5% (fully indexed rate).

[12.15.3.12 NMAC - N, 01/23/2004; Repealed, 06/01/10; 12.15.3.12 NMAC - Rn, 12.15.3.13 NMAC & A, 06/01/10; A, 12/31/10]

12.15.3.13 CREDIT PROPERTY INSURANCE: For purposes of the act, the term “credit property insurance,” does not include fire and hazard insurance, flood insurance, federal housing administration (FHA) mortgage insurance, veteran's administration (VA) loan guarantees, guaranteed rural housing (GRH) loan guarantees and private mortgage insurance that would compensate the holder of a home loan directly for any shortfall between the value of the real property securing the loan and the amount owed on an obligation in default.

[12.15.3.13 NMAC - N, 01/23/2004; A, 06/30/2004; 12.15.3.13 NMAC - Rn, 12.15.3.14 NMAC, 06/01/10]

12.15.3.14 TOTAL PRINCIPAL LOAN AMOUNT: For purposes of the act, the term “total principal loan amount,” as used in Section 58-21A-3 (Q) (1) and (2), NMSA 1978, refers to the total principal loan amount as stated in the promissory note.

[12.15.3.14 NMAC - N, 01/23/2004, A, 06/30/2004; 12.15.3.14 NMAC - Rn, 12.15.3.15 NMAC & A, 06/01/10]

12.15.3.15 “POINTS AND FEES” EXCLUSION FOR UPFRONT PREMIUM PRIVATE

MORTGAGE INSURANCE: In reference to 58-21A-3(M)(1)(d)(14) NMSA 1978, the “percentage rate” will be set biannually on the financial institutions division’s mortgage lending website on the first business day in January and July.

[12.15.3.15 NMAC - N, 01/23/2004; 12.15.3.15 NMAC - N, 06/01/10]

HISTORY OF 12.15.3 NMAC: [RESERVED]