

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 15 FINANCIAL INSTITUTIONS - GENERAL
PART 6 HOME LOAN PROTECTION ACT - REASONABLE DUE DILIGENCE STANDARD
FOR DETERMINING HIGH-COST HOME LOANS

12.15.6.1 ISSUING AGENCY: Financial Institutions Division of the Regulation and Licensing Department.
[12.15.6.1 NMAC - N, 06/30/2004]

12.15.6.2 SCOPE: Any person or his agent who purchases or is otherwise assigned a high-cost home loan subject to the Home Loan Protection Act, Sections 58-21A-1 to -14 NMSA 1978 (2003, as amended through 2004) (“Act”).
[12.15.6.2 NMAC - N, 06/30/2004]

12.15.6.3 STATUTORY AUTHORITY: Section 58-21A-13 NMSA 1978.
[12.15.6.3 NMAC - N, 06/30/2004]

12.15.6.4 DURATION: Permanent.
[12.15.6.4 NMAC - N, 06/30/2004]

12.15.6.5 EFFECTIVE DATE: June 30, 2004, unless a later date is cited at the end of a section.
[12.15.6.5 NMAC - N, 06/30/2004]

12.15.6.6 OBJECTIVE: The objective of this rule is to generally describe the type of circumstances the financial institutions division will consider in determining whether the reasonable due diligence standard set forth in Section 58-21A-11 of the act is satisfied.
[12.15.6.6 NMAC - N, 06/30/2004]

12.15.6.7 DEFINITIONS: For purposes of this rule, the definitions set forth in the act and regulations adopted pursuant to the act shall apply unless otherwise noted.
[12.15.6.7 NMAC - N, 06/30/2004]

12.15.6.8 REASONABLE DUE DILIGENCE:

A. Section 58-21A-11 of the act provides that a person who purchases or is otherwise assigned a high-cost home loan is not subject to an action for certain claims and defenses if the person can demonstrate by a preponderance of the evidence that a reasonable person exercising reasonable due diligence could not determine that the mortgage in question was a high-cost home loan. Due diligence means that degree of review that reasonably may be expected from a purchaser or assignee given the circumstances surrounding the transaction or the conditions existing at the time the review is exercised, including, consideration of the purchaser’s or assignee’s involvement with, or the proximity in time to the loan’ origination.

B. In each case what constitutes reasonable due diligence by a person who purchases or is otherwise assigned a high-cost home loan is dependent on the totality of the facts and circumstances surrounding that person’s loan review, policies and practices. The purpose of this rule is to make clear that in the vast majority of cases, reasonable due diligence does not require a loan-by-loan individualized review. Because the vast majority of home loans purchased or assigned in New Mexico are transacted in secondary markets through large loan pools or mortgage backed securities, the due diligence conducted need only be reasonable, not perfect.

C. Purchasers and assignees should have in effect and utilize reasonable compliance policies and conduct quality control review of appropriate loan documentation, whether by sampling methods or otherwise, to identify and avoid the purchase or acceptance of high-cost home loans.

(1) If none of the loans reviewed is a high-cost home loan, and if all of the other requirements of Subsection A of Section 11 are met, then there shall be a rebuttable presumption that a purchaser or assignee has exercised reasonable due diligence.

(2) When a reasonable review discloses one or more high-cost home loans, then an upgraded compliance review shall be required. The level of an upgraded compliance review may depend upon a number of factors, such as prior experience with the seller or assignor, the number of high-cost home loans identified during the initial review and the procedures used to identify and exclude high-cost home loans from submission for

purchase or assignment. For example, where, after initial review, one or more high-cost home loans are uncovered in a large loan pool, there should be a more extensive review of the loan pool to evaluate: (1) a reasonable number of the remaining loans, (2) the reliability of any representations and warranties in place that there are no high-cost home loans in the pool; and (3) the extent to which there are other high cost home loans in the pool. The level of this review depends upon a number of factors, including the overall size of the pool, the reliability of the loan source, the number of high-cost home loans identified during the initial due diligence process, how extensive that initial review process was, and the procedures in place by originators to identify high-cost home loans and exclude them from the loan pool.

[12.15.6.8 NMAC - N, 06/30/2004]

HISTORY OF 12.15.6 NMAC: [RESERVED]