

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 16 BANKING
PART 76 APPLICABILITY OF HOME LOAN PROTECTION ACT

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

12.16.76.2 SCOPE: All state chartered banks otherwise subject to the Home Loan Protection Act, Sections 58-21A-1 to -14 NMSA 1978 (2003, as amended through 2004) ("Act").
[12.16.76.2 NMAC - N, 01/01/2004; A, 06/15/2004]

12.16.76.3 STATUTORY AUTHORITY: Sections 58-1-54 and 58-1-34 NMSA 1978.
[12.16.76.3 NMAC - N, 01/01/2004]

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

12.16.76.5 EFFECTIVE DATE: January 1, 2004, unless a later date is cited at the end of a section.
[12.16.76.5 NMAC - N, 01/01/2004]

12.16.76.6 OBJECTIVE: The objective of this part is to grant state chartered banks the same powers and authority to engage in banking activity that federally chartered and insured depository institutions subject to the jurisdiction of the federal government are authorized, empowered, permitted or otherwise allowed to exercise.
[12.16.76.6 NMAC - N, 01/01/2004; A, 06/15/2004]

12.16.76.7 DEFINITIONS: [RESERVED]
[12.16.76.7 NMAC - N, 01/01/2004]

12.16.76.8 FINDINGS:

A. Within the meaning of Sections 58-1-54 and 58-1-34 NMSA 1978, national banks, federal savings associations and federal credit unions operating in New Mexico are federally chartered and insured depository institutions subject to the jurisdiction of the federal government.

B. The office of thrift supervision, department of the treasury, the "OTS," is authorized by federal legislation to regulate and supervise federal savings associations throughout the United States.

C. The office of the comptroller of the currency, department of the treasury, the "OCC," is authorized by federal legislation to regulate and supervise national banks throughout the United States.

D. The national credit union administration, the "NCUA," is authorized by federal legislation to regulate and supervise federal credit unions throughout the United States.

E. On September 2, 2003 the OTS issued a letter ruling (the "OTS preemption") clarifying the fact that the following sections and subsections of the act (the "preempted sections of the act") are pre-empted by federal law from applying to federal savings associations operating in New Mexico:

(1) Section 58-21A-4.A. and B. (prohibited practices and provisions regarding home loans);

(2) Section 58-21A-5.A., B., C., D., E., G., H., I., J., K., L., M., N., O., and P (limitations and prohibited practices for high-cost home loans);

(3) Section 58-21A-6.A., B., C., D., and E. (default; notice; right to cure);

(4) Section 58-21A-9.A., B., and C. (civil action);

(5) Section 58-21A-11.B. and C. (actions based on home loans);

(6) Section 58-21A-12. (application of Unfair Practices Act); and

(7) Section 58-21A-13. (attorney general; enforcement of rules).

F. Based upon the OTS preemption, effective January 1, 2004, federal savings associations in New Mexico are authorized to engage in certain banking activities otherwise prohibited by the act.

G. Effective February 12, 2004, the OCC published a final rule that states, in pertinent part: "state laws that obstruct, impair, or condition a national bank's ability to fully exercise its federally authorized real estate lending powers do not apply to national banks" (the "OCC preemption").

H. Based on the OCC preemption, since January 1, 2004, national banks in New Mexico have been authorized to engage in certain banking activities otherwise prohibited by the act.

I. On February 10, 2004 the NCUA issued a letter opinion stating that because the act purports to limit or affect the rates, terms of repayment, and other conditions of loans and lines of credit that federal credit unions may offer to their members, the act is preempted by federal law from applying to federal credit unions in New Mexico (the "NCUA preemption").

J. Based upon the NCUA preemption, since January 1, 2004, federal credit unions in New Mexico have been authorized to engage in certain banking activities otherwise prohibited by the act.

K. New Mexico state chartered banks will be placed at a competitive economic disadvantage if authorization is not given for state chartered banks to engage in the same banking activity that national banks, federal credit unions and federally chartered and insured savings associations-are authorized to engage in in New Mexico as a result of the OCC, NCUA and OTS preemptions.

[12.16.76.8 NMAC - N, 01/01/2004; A, 06/15/2004]

12.16.76.9 AUTHORITY: State chartered banks are provided the same powers and authority granted to federal savings associations, national banks and federal credit unions as a result of the OTS, OCC and NCUA preemptions.

[12.16.76.9 NMAC - N, 01/01/2004; A, 06/15/2004]

HISTORY OF 12.16.76 NMAC: [RESERVED]