

**TITLE 2 PUBLIC FINANCE**  
**CHAPTER 60 INVESTMENT AND DEPOSIT OF PUBLIC FUNDS**  
**PART 7 PROCEDURES FOR DESIGNATING A FISCAL AGENT AND CUSTODY BANK OF NEW MEXICO**

**2.60.7.1 ISSUING AGENCY:** State Board of Finance  
[2.60.7.1 NMAC - N, 12-1-2009]

**2.60.7.2 SCOPE:** Banks, savings and loan associations, and custody banks submitting proposals to be the fiscal agent or custody bank for the state of New Mexico.  
[2.60.7.2 NMAC - N, 12-1-2009]

**2.60.7.3 STATUTORY AUTHORITY:** Section 6-10-35, NMSA, 1978 Comp., provides that the state board of finance may designate a bank or savings and loan association doing business in this state and having an unimpaired capital and surplus of at least \$20,000,000 as the fiscal agent of New Mexico. The statute also provides that after designation of the state fiscal agent, the board shall apprise the legislature of its designation and shall include a brief description of the designee's particular qualifications.  
[2.60.7.3 NMAC - Rn, Directive 87-4 & A, 12-1-2009]

**2.60.7.4 DURATION:** Permanent  
[2.60.7.4 NMAC - N, 12-1-2009]

**2.60.7.5 EFFECTIVE DATE:** July 1, 1987, unless a later date is cited at the end of a section.  
[2.60.7.5 NMAC - Rn, Directive 87-4 & A, 12-1-2009]

**2.60.7.6 OBJECTIVE:** Establishes designation procedures for selecting a fiscal agent bank and custody bank for the state of New Mexico.  
[2.60.7.6 NMAC - N, 12-1-2009]

**2.60.7.7 DEFINITIONS:**

A. "Fiscal agent" is that bank or savings and loan association selected by the board to provide services such as:

- (1) collection for the state of all checks or other items received by the state on any account;
- (2) handling of the checking account of the state treasurer;
- (3) handling of all transfers of money in connection with the sale or retirement of bonds or obligations of the state;
- (4) the rate of interest to be paid upon average daily balances of state funds; and
- (5) acting as the agent of the state in fiscal matters generally, except as to those matters for which the custody bank provides custodial service to the state, subject always to supervision and approval of the state board of finance.

B. "Custody bank" is that bank selected by the board to provide services such as:

- (1) executing intructions from the investing agencies as to investments of permanent or other funds of the state, except for certain investments made by the state treasurer through the fiscal agent;
  - (2) safekeeping of bonds or other securities belonging to or held by the state or any official thereof;
- and

(3) acting as an agent of the state in matters involving custodial services, except as to those matters for which the fiscal agent provides services to the state, subject always to the supervision and approval of the state board of finance.

[2.60.7.7 NMAC - N, 12-1-2009]

**2.60.7.8 DESIGNATION PROCEDURES: FISCAL AGENT:** The state board of finance may accept and review proposals from banks and savings and loan associations to be fiscal agent for the state of New Mexico, submitted in response to a request for proposals issued in conformance with the state Procurement Code and the applicable regulations.

A. The board's request for proposals for designation of a fiscal agent shall include the following minimum qualifications and requirements.

(1) The bank or savings and loan association must have an unimpaired capital and surplus, tier 1 core capital as defined by federal regulations, of at least twenty million dollars (\$20,000,000) and must be doing business in New Mexico.

(2) The bank or savings and loan association must agree that it shall maintain and furnish at its expense throughout the term of the agreement a banker's blanket bond per occurrence coverage in a minimum amount of ten million dollars (\$10,000,000) containing terms and conditions acceptable to the state board of finance.

(3) The bank or saving and loan must agree that it will maintain at an approved custodial financial institution throughout the term of the agreement securities of the amount and kind specified by Sections 6-10-35, 6-10-16 and 6-10-17 NMSA 1978, and approved by the board as security for the safekeeping of money of the state of New Mexico and the faithful performance of its duties as the fiscal agent. The amount of securities shall be (a) twenty-five million dollars (\$25,000,000), or (b) the amount of collateral as required by the state treasurer to comply with the state board of finance collateral policy, whichever is greater. The board may, by resolution, adjust these security requirements as it deems necessary to protect the interest of the state.

(4) The bank or savings and loan association must agree to wholly indemnify the state, for any and all loss, damage, cost, damages, expenses (including, without limitation, legal fees and expenses) and liability to the state (collectively hereinafter "loss") resulting from errors, omissions, fraud, embezzlement, theft, negligence or neglect (collectively hereinafter "actions or omissions") by the bank or savings and loan association, and its employees, officers, agents and directors in performing their duties hereunder or under agreement, as applicable. The bank or savings and loan association must also acknowledge and agree that any loss to the state shall, unless such loss can be demonstrated by the fiscal agent to have been due to a cause or causes beyond its reasonable control (such as acts of God, acts of the public enemy, insurrections, riots, fires, explosions, orders or acts of civil or military authority and other cataclysmic events, to the extent all reasonable and diligent precautions by the fiscal agent could not have prevented the damage or loss resulting from any such event) be conclusively presumed to be the result of actions or omissions on the part of the fiscal agent. Limited exceptions to this indemnification requirement may be permitted in any agreement entered into by the board with the bank or savings and loan association as to information supplied to the fiscal agent by the state treasurer, pursuant to any funds transfer, ach, safekeeping or other collateral agreement, or any other state agency, or such other exception as may be required in order to enable the provision of a particular service by the bank or savings and loan association. Any such limited exception must be included in the fiscal agent agreement and be acceptable to and specifically approved by the board.

(5) The bank or savings and loan association must agree to comply with requirements of the financial institutions Reform, Recovery, and Enforcement Act and any other applicable law to avoid seizure by federal regulators of any assets the fiscal agent pledges to secure state deposits in accordance with Paragraph (3) of Subsection A of 2.60.7.8 NMAC.

B. Designation of the fiscal agent shall be in the form of an agreement with the state board of finance for a term not to exceed the term allowed under the Procurement Code as deemed appropriate by the board. [2.60.7.8 NMAC - Rn, Directive 87-4 & A, 12-1-2009; A, 9-30-2013]

**2.60.7.9 DESIGNATION PROCEDURES: CUSTODY BANK:** The state board of finance may accept and review proposals from banks to be custody bank for the state of New Mexico, submitted in response to request for proposals issued in conformance with the state procurement code and the applicable regulations.

A. The board's request for proposals for designation of a custody bank shall include the following minimum qualifications and requirements:

(1) The bank must have an unimpaired capital and surplus, tier 1 core capital as defined by federal regulations of at least twenty million dollars (\$20,000,000) and must be doing business in New Mexico.

(2) The bank must agree that it shall maintain and furnish at its expense throughout the term of the agreement a banker's blanket bond per occurrence coverage in a minimum amount of fifty million dollars (\$50,000,000) and additional coverage for electronic computer crime losses in the minimum amount of twenty-five million dollars (\$25,000,000) per occurrence. Each such coverage must contain terms and conditions acceptable to the state board of finance.

(3) The bank must agree to wholly indemnify the state for any and all loss, damage, cost, damages, expenses (including, without limitation, legal fees and expenses) and liability (collectively hereinafter "loss")

resulting from errors, omissions, fraud, embezzlement, theft, negligence or neglect by the custody bank, its employees, officers, agents and directors in performing their duties under the custody bank agreement. The custody bank must also acknowledge and agree that any loss shall, unless such loss can be demonstrated by the custody bank to have been due to a cause or causes beyond the reasonable control of the custody bank (such as acts of God, acts of the public enemy, insurrections, riots, fires, explosions, orders or acts of civil or military authority and other cataclysmic events, to the extent all reasonable and diligent precautions by the custody bank could not have prevented the damage or loss resulting from any such event) be conclusively presumed to be the result of errors, omissions, fraud, embezzlement, theft, negligence or neglect on the part of the custody bank. Limited exceptions to this indemnification requirement may be permitted in any agreement entered by the board with the custody bank as to information supplied by the state treasurer or any other investing agency (i.e. public employees retirement association, education retirement board, state investment council) pursuant to any safekeeping or other collateral agreement or such other limited exception as may be required in order to enable the provision of a particular service by the custody bank. Any such limited exception must be included in the custody bank agreement and be acceptable to and specifically approved by the board.

B. Designation of the custody bank shall be in the form of an agreement with the state board of finance for a term not to exceed the term allowed under the Procurement Code as deemed appropriate by the board. [2.60.7.9 NMAC - N, 12-1-2009; A, 9-30-2013]

**HISTORY OF 2.60.7 NMAC:**

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:

SRC 73-1, Procedures to be Followed by the State Board of Finance in Designating a Fiscal Agent for the State of New Mexico, May 15, 1973, 5/21/73.

SRC 73-1, Amendment No. 1, Procedures to be Followed by the State Board of Finance in Designating a Fiscal Agent for the State of New Mexico, May 11, 1976, 5/18/76.

Directive 87-4, Procedures for Designating a Fiscal Agent of New Mexico, 9/25/87.

History of Repealed Material: [RESERVED]