

This rule was filed as 2 NMAC 60.16.

TITLE 2 PUBLIC FINANCE
CHAPTER 60 INVESTMENT AND DEPOSIT OF PUBLIC FUNDS
PART 16 SEVERANCE TAX PERMANENT FUND POLICY GOVERNING PURCHASES OF SMALL BUSINESS ADMINISTRATION OR FARMERS HOME ADMINISTRATION OBLIGATIONS

2.60.16.1 ISSUING AGENCY: State Investment Council, 2055 S. Pacheco Street, Suite 100, Santa Fe, New Mexico 87505
[06/15/99; Recompiled 10/01/01]

2.60.16.2 SCOPE: New Mexico small business administration or farmers home administration.
[06/15/99; Recompiled 10/01/01]

2.60.16.3 STATUTORY AUTHORITY: Pursuant to Section 7-27-5.4 (A) NMSA 1978 as amended pursuant to Senate Bill 1018 approved by the 41st legislature of the state of New Mexico, 2nd session, which says, in part" no more than ten percent of the book value of the severance tax permanent fund (the STPF") may be invested in notes or obligations securing loans to New Mexico businesses made by farm credit entities, banks and savings and loan associations and mortgages approved by the congress of July 30, 1953 known as the Small Business Act of 1953, as amended, and notes or obligations pursuant to the act of congress of August 14, 1946 amended, only to the extent that both principal and interest are guaranteed by the United States government." The effective yield of these loans shall be a market rate not less than the yield available on the planned amortized class tranche of collateralized mortgage obligations guaranteed by mortgage corporation with an average life comparable to the maturity of the loan. The state investment officer may enter into administration of the receipts therefrom. Any servicing agreement may contain reasonable and customary provisions, including servicing fees not to exceed one hundred fifty basis points, as may be agreed upon; provided, in no event shall the rate paid by the borrower on the loan, together with servicing fees, exceed the maximum rate permitted by the applicable federal guarantee program;"
[06/15/99; Recompiled 10/01/01]

2.60.16.4 DURATION: Permanent.
[06/15/99; Recompiled 10/01/01]

2.60.16.5 EFFECTIVE DATE: June 15, 1999 unless a later date is specified at the end of a section or paragraph.
[06/15/99; Recompiled 10/01/01]
[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

2.60.16.6 OBJECTIVE: As amended pursuant to Senate Bill 1018 approved by the 41st legislature of the state of New Mexico, 2nd session, which says, in part" no more than ten percent of the book value of the severance tax permanent fund (the STPF") may be invested in notes or obligations securing loans to New Mexico businesses made by farm credit entities, banks and savings and loan associations and mortgages approved by the congress of July 30, 1953 known as the Small Business Act of 1953, as amended, and notes or obligations pursuant to the act of congress of August 14, 1946 amended, only to the extent that both principal and interest are guaranteed by the United States government."
[06/15/99; Recompiled 10/01/01]

2.60.16.7 DEFINITIONS: [RESERVED]

2.60.16.8 INVESTMENT MANAGEMENT POLICY:
A. **IMPLEMENTATION:** Commitments made on behalf of the STPF to purchase the SBA or FmHA guaranteed portion of loans before Senate Bill 1018 of the 41st New Mexico legislature, 2nd session, was passed and became law shall be honored according to the rates, servicing fees and other terms as provided in SIC Rule 89-1, dated November 30, 1989 and amended on October 20, 1993, based on New Mexico statues existing at the time the commitment was made. However, all commitments issued on behalf of the STPF after March 8, 1994 to

purchase loans guaranteed by the SBA of FmHA shall be issued according to the rates, servicing fees and other terms of SIC Rule 94-2 pursuant to Section 7-27-5.4 (A), NMSA 1978, as amended by Senate Bill 1018 approved by the 41st legislature of the state of New Mexico, 2nd session.

B. RATES: The effective yield to the STPF on these loans shall be a market rate equivalent to the yield on the planned amortized class tranche of collateralized mortgage obligation guaranteed by the federal national mortgage association or the federal home loan mortgage corporation (FNMA or FHLMC PAC CMO's"), rounded up to the nearest 1/8 of 1 percent, with an average life comparable to the maturity of the loan. In order to produce an effective yield to the STPF equivalent to yields on FNMA or FHLMC PAC CMO's with an average life of comparable maturity as required by New Mexico law, a blended rate may be used for any SBA/FmHA guaranty purchased by the STPF which includes a partial refinancing of a loan previously purchased by the STPF guaranteed by the SBA or FmHA. The blended rate shall be calculated by weighting the rate, time and amount of the loan to be refinanced together with the portion of the new loan used for purposes other than refinancing. Not less than 25 percent of the proceeds of the loan refinancing must be used for new purposes other than refinancing.

C. AMORTIZATION/MATURITY PERIODS: The loan amortization/maturity periods shall be limited to 5, 7, 10, 15, 20 and 25 years.

D. COMMITMENT FEES: A one percent commitment fee to be paid by the farm credit entities, bank or savings and loan association to the STPF shall be charged on all SBA and FmHA loans. The term of such commitment shall be set by the SBA and FmHA based on the institution's and SBA's or FmHA's best estimate of the time required to close the loan, but in no case shall such terms exceed four (4) months, except in the case of construction loans where the term may be extended to twelve months.

(1) The commitment fee is refundable to the bank or savings and loan only (a) upon delivery of the loan within the commitment period or within the extended commitment period of an extension is granted by the state investment officer. (b) if the SBA withdraws or cancels its guaranty before the loan is sold to the STPF, or (c) if, considering the circumstances at the time, the state investment officer determines it is in the best interest of the STPF to refund the commitment fee for reasons not contained in this policy.

(2) If a loan is not funded until after the expiration date, the state may still purchase it at its discretion. However, if the state does accept the loan this does not imply that the commitment fee will be refunded.

E. SERVICING COMPENSATION: A maximum servicing fee of one hundred fifty (150) basis points of interest may be charged by the bank or savings and loan association on the unpaid balance of the loan as compensation for servicing by the financial institution; provided, in no event shall the total rate of interest paid by the borrower on the loan, including the yield to the STPF equivalent to the FNMA or FHLMC PAC CMO yield together with servicing fees up to a maximum of 150 basis points of interest, exceed the maximum rate permitted by the applicable federal guarantee program. In addition, a one-eighth of one percent (.00125) servicing fee computed on the unpaid balance of the loan shall be charged to the borrower to pay Colson Acquisition Service. Servicing fees payable to Colson Acquisition Service and any other fees that may be assessed by the applicable federal guarantee program shall be paid by the financial institution servicing [sic] the loan from the servicing fees received by that institution as provided in this paragraph. In the event the FNMA or FHLMC PAC CMO yields plus 150 basis points for servicing fees exceed the maximum rate allowed by the applicable federal guarantee program, the servicing fees shall be limited to the difference between the FNMA or FHLMC PAC CMO yield and the maximum rate allowed by the applicable federal guarantee program.

F. EXTENSION: The state investment officer may grant extension beyond the original commitment period if the SBA or FmHA has granted an extension. The SBA or FmHA shall determine the terms and conditions for such extension after consultation with the bank, or savings and loan association and receiving the approval of the state investment officer.

G. DEFERMENT OF PAYMENTS: Deferment of payments beyond the initial three-month period allowed in SBA 1086 may be granted, if such deferment is approved by the lending institution and the SBA. The deferment, including the initial three-month period, may not exceed six months. Deferment of payments beyond six months may be granted on a case by case basis with the prior approval of the state investment officer. As consideration for each deferment and deferment extension the STPF will impose a fee of \$25.00 for the first \$10,000 of principal or principal and interest deferred. For each \$2,000 of principal or principal and interest greater than \$10,000 and additional \$5.00 will be charged. The fee will be calculated on the total amount of principal or principal and interest deferred. The fee is paid by the lender to the state investment office and may be charged to the borrower.

[06/15/99; Recompiled 10/01/01]

2.60.16.9 PROCEDURE: Upon approval of a loan by the SBA/FmHA, the originating financial institution desiring to sell the loan to the state investment council should contact the SBA/FmHA portfolio manager by phone or in writing to request a commitment. The portfolio manager will provide a commitment at the time of receiving the request and will issue a commitment letter providing the details of the commitment.

A. Each request for a commitment must include the following information; the borrowers name, the SBA GP number or FmHA case number, the maximum amount the loan is approved for, the loan maturity, the guarantee portion of the loan, as a percent, to be purchased by the state, the nature of the loan and the commitment period.

B. In the month the institution is prepared to deliver the loan the state investment office must receive at least two weeks prior to settlement from the originating institution an invoice on a form provided by the STPF and the completed loan package in the form required by the SBA or farmer's home administration.

C. The severance tax fund will purchase SBA and FmHA loans on or about the 20th of each month. Accrued interest may be purchased. Please forward the necessary documents to this office at least two weeks prior to settlement.

D. Send all correspondence to: State Investment Council, Portfolio Manager SBA Loans, 2055 S. Pacheco, Suite 100, Santa Fe, New Mexico 87505, Phone # 505-424-2500.
[06/15/99; Recompiled 10/01/01]

2.60.16.10 GUARANTEED PAYMENTS: To provide both timeliness and certainty in loan payments the state investment office may convert each SBA loan purchased after July 1, 1989 to a depository receipt, offered by Colson Acquisition Service to guarantee payments on the same day every month. Also, all loans currently held may be converted to the depository receipt, if they are eligible and it is cost effective. The state investment office will pay the cost of converting the SBA certificate to the depository receipt. The lender will continue to pay the initial standard setup fee.

[06/15/99; Recompiled 10/01/01]

HISTORY OF 2.60.16 NMAC:

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

SIC Rule 89-1, Severance Tax Permanent Fund Policy Governing Purchases of Small Business Administration or Farmers Home Administration Obligations, filed 5/23/89.

SIC Rule 94-2, Severance Tax Permanent Fund Policy Governing Purchases of Small Business Administration or Farmers Home Administration Obligations, filed 4/6/94.

History of Repealed Material: [RESERVED]