

This rule was filed as SIC Rule 88-6.

TITLE 2 PUBLIC FINANCE
CHAPTER 60 INVESTMENT AND DEPOSIT OF PUBLIC FUNDS
PART 17 COLLATERAL POLICY FOR NEW MEXICO BANKS GOVERNING CERTIFICATES OF DEPOSIT CREATED AFTER MAY 25, 1988

2.60.17.1 ISSUING AGENCY: State Investment Council.
[Recompiled 10/01/01]

2.60.17.2 SCOPE: [RESERVED]
[Recompiled 10/01/01]

2.60.17.3 STATUTORY AUTHORITY: Sections 7-27-5, 7-27-5.2 [repealed], 6-8-7, 6-10-10, 6-10-16, 6-10-17, 6-10-18, 6-10-20, 6-10-24.1, 6-10-29 and 6-10-35 NMSA 1978
[Recompiled 10/01/01]

2.60.17.4 DURATION: [Permanent.]
[Recompiled 10/01/01]

2.60.17.5 EFFECTIVE DATE: These rules will become effective five (5) days after filing with the records center and archives commission. [Filed June 6, 1988, effective June 11, 1988]
[Recompiled 10/01/01]

2.60.17.6 OBJECTIVE: In the exercise of its authority under Sections 7-27-5, 7-27-5.2 [repealed], 6-8-7, 6-10-10, 6-10-16, 6-10-17, 6-10-18, 6-10-20, 6-10-24.1, 6-10-29 and 6-10-35 NMSA 1978, the state investment council (the "council") desires to minimize potential risks to existing and future bank deposits of severance tax permanent funds ("state funds"). As a first step towards achieving this objective, the council hereby directs the state investment officer to review the financial condition of each bank in the program. The review will include a determination of each bank's primary capital/asset ratio, its net income/total average assets ratio and its non-performing loans/primary capital ratio. The institutions shall then be classified according to the level of risk, and each level of risk assigned an appropriate level of collateralization.
[Recompiled 10/01/01]

2.60.17.7 DEFINITIONS:

A. "Securities" shall be defined as those securities eligible as collateral for severance tax permanent funds under Section 6-10-16 and 7-27-5.2 [repealed], as amended, and effective May 21, 1986, Art. IV, Section 23, N.M. Constitution.

B. "Mortgages", shall be defined as eligible mortgage collateral under Section 7-27-5.2 NMSA 1978 [repealed] and the council's guidelines promulgated under Section 7-27-5.2 [repealed], as those guidelines may be amended from time to time by the council.

C. Risk classifications:

(1) "CLASS A" means a bank which meets all of the following conditions:

(a) a primary capital to asset ratio (as defined by the FDIC) of 6 percent or greater;

(b) a net income (current quarter plus previous three quarters after taxes) to average asset ratio

of .61 percent or greater.

(c) a ratio of non-performing loans (defined as loans which are at least 90 days past due) to primary capital ratio of 34.9 percent or less.

(d) Failure of a bank to meet any one of these ratios automatically results in reclassification into the next lower financial class.

(2) "CLASS B" means a bank with all of the following financial conditions:

(a) a primary capital to asset ratio (as defined by the FDIC) of at least 5 percent;

(b) a net income (current quarter plus previous three quarters after taxes) to average asset ratio of at least .51 percent;

(c) A ratio of non-performing loans (defined as loans which are at least 90 days past due) to the bank's primary capital of no more than 49.9 percent.

(d) Failure of a bank to meet any one of these ratios automatically results in reclassification into the next lower financial class.

(3) "CLASS C" means a bank with any one of the following financial conditions:

(a) a primary capital to asset ratio (as defined by the FDIC) of less than 5 percent.

(b) a net income (current quarter plus previous three quarters after taxes) to average asset ratio less than .51 percent.

(c) A ratio of non-performing loans (defined as loans which are at least 90 days past due) to the bank's primary capital of greater than 49.9 percent.

(4) "CLASS D" means a bank with any two of the following financial conditions:

(a) a primary capital to asset ratio (as defined by the FDIC) of less than 2 1/2 percent.

(b) a net income (current quarter plus previous three quarters after taxes) to average asset ratio of less than .10 percent.

(c) a ratio of non-performing loans to the bank's primary capital of greater than 67 percent, two quarters in a row during the past 12 months.

[Recompiled 10/01/01]

2.60.17.8 COLLATERALIZATION REQUIREMENTS:

A. The investment officer shall require collateral levels to be maintained for all institutions (within each classification) in accordance with the following schedule for both new deposits and reinvestments of existing deposits. These rules will become effective five (5) days after filing with the records center and archives commission.

(1) CLASS A. A bank in this classification shall be required to maintain collateral at the statutory minimum level set forth in Section 6-10-17 NMSA 1978 or Section 7-27-5.2 NMSA 1978 [repealed], as applicable. Collateral in the form of securities shall have an aggregate market value equal to 50 percent of the amount of deposit. Collateral in the form of mortgages shall have an aggregate outstanding principal balance equivalent to 120 percent of the amount of the initial deposit, and shall be maintained at a minimum of an aggregate outstanding principal balance equivalent to 100 percent of the amount of the deposit.

(2) CLASS B. A bank in this classification shall be required to maintain collateral in the form of securities with an aggregate market value equal to 75 percent of the amount of deposit, or collateral in the form of mortgages with an aggregate outstanding principal balance equivalent to 120 percent of the amount of the initial deposit.

(3) CLASS C. A bank in this classification shall be required to maintain collateral in the form of securities with an aggregate market value equal to 100 percent of the amount of the deposit, or collateral in the form of mortgages with a minimum aggregate outstanding principal balance equivalent to 120 percent of the amount of the deposit.

(4) CLASS D. A bank in this classification shall be required to maintain collateral in the form of securities with an aggregate market value equal to 100 percent of the amount of the deposit, or collateral in the form of mortgages with an aggregate outstanding principal balance equivalent to 120 percent of the amount of the deposit. The investment officer may, at his discretion, require the pledging of additional mortgage collateral (up to 200 percent of the outstanding principal balance), or additional securities with an aggregate market value equal to 120 percent of the amount of the deposit, to prevent the loss of public funds.

B. A newly chartered bank shall be considered as having class A collateral requirement for the first year of operation, and in its second year of operation, the bank shall annualize its net operating income beginning with the first quarter of the second year for the purpose of calculating ratios pursuant to this Subsection [now 2.60.17.8 NMAC].

C. FDIC insurance will not be counted as collateral unless the bank is willing to certify quarterly, in writing, the insurance amount after prorating other state accounts, including agency accounts.

D. If a bank is unable to meet the collateral level required by its financial classification, the state investment officer may make withdrawals of deposits to the amount which can be collateralized at an appropriate level, as specified above. The increased collateral levels shall be required until the ratios of the institution return to a level which allows an upgrade in classification (as determined by the risk assessment ratios of the bank). The collateral levels shall be governed by the policy in effect at the time of deposit or reinvestment of a certificate of deposit.

E. Any qualifying bank that fails to maintain the pledge of qualifying collateral or other security for deposits, or fails to substitute or provide additional qualifying collateral or security when requested by the state investment officer is subject to a penalty by the director of the financial institutions division, of the commission on banking for New Mexico, of up to one hundred dollars (\$100) a day for each two hundred and fifty thousand dollars (\$250,000) deposited for each day the violation continues. The state investment officer may also take any other action as deemed necessary to secure state deposits.

F. In making the decision to accept or reject collateral, the state investment office and the treasurer's office reserves the right to reject, either at the time of submission or at any time thereafter, any collateral that does not meet all statutory criteria and any collateral not of sufficient quality to protect the state's interests.

G. Depository institutions are to provide to the state investment office a complete audit of all mortgage collateral by an outside certified public accountant, using generally accepted auditing standards, to ensure that all requirements of the depository and custodial agreements, state law, these regulations and any other pertinent regulations have been met. Audits will be performed annually, or more frequently as requested by the state investment officer. Specific guidelines for the required audit of all mortgage collateral will be developed by the state investment office.

[Recompiled 10/01/01]

2.60.17.9 GENERAL:

A. In the event of a premature withdrawal of deposits, the bank may impose the minimum penalty provided by federal law.

B. The figures to be used by the investment officer in the risk-assessment analyses shall be calculated by each bank, including those relying on FDIC insurance instead of collateral, from the quarterly call statements and shall be furnished to the investment officer no later than the tenth day of the second month following that quarter, provided however, if the tenth day falls on a weekend or legal holiday, the figures shall be submitted on the next business day. The figures provided to the state investment officer by the bank shall be certified in writing by the president of the bank, an executive officer of the bank, or a person authorized by corporate resolution of the bank to certify the information. The investment officer shall, at any given time between quarterly reporting periods, request additional certified information from the bank, as needed to assess the risk level of any bank. If a bank fails to provide the requested information, it shall be required to maintain collateral in the form of securities or mortgages, as appropriate, with an aggregate market value equal to or greater than 100 percent of the amount of deposit for securities and an aggregate outstanding principal balance equal to or greater than 120 percent of the deposit for mortgages, as applicable.

C. The investment officer is also directed to require each bank which has had a final administrative enforcement action imposed upon it to advise the investment officer of such action. If the investment officer believes such action indicates a high level of risk in maintaining public deposits in that bank, he shall report to the council, and they shall decide whether additional collateral or actions will be required.

D. Notwithstanding any of the above provisions, the state investment officer may make an emergency withdrawal of state deposits prior to maturity when in his judgement it is necessary in the exercise of reasonable care to protect state funds.

E. If a bank believes that exceptional circumstances exist indicating that it would not be appropriate for the investment officer to take any of the actions listed above, the bank shall appear at a meeting of the state investment council to present its position. The council may at that time vote on whether an exception to the policy will be allowed, or it may continue the issue in order to take further evidence, testimony or advice. In order to be placed on the council's agenda, the institution shall submit to the state investment office at least 10 calendar days prior to the meeting, a written request stating its position to the investment office including a bill of particulars, copies of any statutes or cases it intends to use in its presentation, as well as a list of names, titles and business addresses and phone numbers of anyone whose testimony it deems necessary.

F. The investment officer is further directed to take immediate and prudent steps to initiate this policy.

G. Nothing herein shall restrict the state treasurer, state investment officer or the state investment council from the lawful exercise of rights and duties conferred by law.

[Recompiled 10/01/01]

HISTORY OF 2.60.17 NMAC:

Pre-NMAC History: The material in this Part was derived from that previously filed with the State Records Center and Archives:
SIC Rule 88-6, Collateral Policy for New Mexico Banks Governing Certificates of Deposit Created After May 25, 1988, 6-6-88.

History of Repealed Material: [RESERVED]