

This rule was filed as SIC Rule 85-2.

TITLE 2 PUBLIC FINANCE
CHAPTER 60 INVESTMENT AND DEPOSIT OF PUBLIC FUNDS
PART 24 RULES AND REGULATIONS OF THE NEW MEXICO STATE INVESTMENT COUNCIL PERTAINING TO THE THIRD SEVERANCE TAX PERMANENT FUND SINGLE FAMILY MORTGAGE POOLING PROGRAM

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

2.60.24.2 SCOPE: These rules and regulations apply to the purchase of the conventional mortgage pass-through certificates in the original amount of up to \$87,000,000, reduced by the principal amount of the certificate authorized by and delivered pursuant to the council's rule 84-1 [now 2.60.23 NMAC] and by letter agreement of August 29, 1984, as amended. The council's rule 84-1 [now 2.60.23 NMAC] continues to apply to the purchase of the conventional mortgage pass-through certificate, in the amount of up to \$87,000,000 which was previously authorized by the council.
[Recompiled 10/01/01]

2.60.24.3 STATUTORY AUTHORITY: These council rules and regulations are issued under and pursuant to Section 10 of Chapter 306 of the Laws of 1983 of the state of New Mexico, being Section 7-27-5.3 NMSA 1978, (the "Pass-through Securities Investment Act").
[Recompiled 10/01/01]

2.60.24.4 DURATION: [RESERVED]
[Recompiled 10/01/01]

2.60.24.5 EFFECTIVE DATE: [Filed March 28, 1985]
[Recompiled 10/01/01]

2.60.24.6 OBJECTIVE: These council rules and regulations are established to effectuate, and shall be applied so as to accomplish, the general purposes of the Pass-through Securities Investment Act and the following specific objectives:

- A. the expansion of the supply of funds in the state available for new residential mortgages;
- B. promotion of the economic well-being of the state through increased construction and opportunity for employment;
- C. the regulation by the council of the authority and the mortgage lenders participating in the STM program;
- D. the establishment of guidelines by the council for mortgage loans eligible for inclusion in the mortgage pass-through security; and
- E. the determination of the yield required to be paid on the mortgage pass-through security pursuant to the Pass-through Securities Investment Act.

[Recompiled 10/01/01]

2.60.24.7 DEFINITIONS: The following words and terms as used in these council rules and regulations shall have the following meanings:

- A. "Application" shall mean an application to sell mortgage loans filed by a mortgage lender with the authority in response to an invitation.
- B. "Authority" shall mean the New Mexico mortgage finance authority, created by the New Mexico Mortgage Finance Authority Act.
- C. "Authority rules and regulations" shall mean the rules and regulations issued by the authority under and pursuant to the Mortgage Finance Authority Act, Section 58-18-1, *et seq.*, NMSA 1978, as amended.
- D. "Condominiums" shall mean real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership, as an undivided interest, solely by the owners of those portions.

- E. "Conventional mortgage" shall mean a mortgage loan which is not guaranteed by the VA or insured by the FHA or the FmHA.
- F. "Council" shall mean the state investment council of the state acting in connection with the investment of the state's severance tax permanent fund.
- G. "Council rules and regulations" shall mean these rules and regulations issued by the council under and pursuant to Section 10 of Chapter 306 of the Laws of 1983 of the state of New Mexico, being Section 7-27-5.3 NMSA 1978 (the "Pass-through Securities Investment Act").
- H. "Eligible assumptor" shall mean a person who meets, at the time the application for assumption of loan is made, the definition of an eligible mortgagor, and who intends to occupy the single family residence purchased as his or her principal residence within 30 days after the closing of the assumption.
- I. "Eligible mortgagor" shall mean a person who is over the age of 18 and a domiciliary of the state, who meets the credit standards set forth in the guide for servicers.
- J. "Family" shall mean a person or a group of persons, at least one of whom shall be an eligible mortgagor, consisting of, but not limited to, the head of a household, the spouse, if any, and children, if any, who are allowable as personal exemptions for federal income tax purposes.
- K. "FDIC" shall mean the federal deposit insurance corporation.
- L. "FHA" shall mean the federal housing administration.
- M. "FmHA" shall mean the farmers home administration.
- N. "FNMA" shall mean the federal national mortgage association.
- O. "FSLIC" shall mean the federal savings and loan insurance corporation.
- P. "Guide for servicers" shall mean the authority's STM program guide for seller/servicers, as it may be modified from time to time by the authority.
- Q. "Invitation" shall mean the authority's then current invitation to mortgage lenders for applications to sell mortgage loans to the authority pursuant to the STM program.
- R. "Manufactured housing" shall mean a modular or pre-manufactured home, built to uniform building code standards, which is designed to be and, prior to the closing of a mortgage loan on the home, is, permanently affixed to real property.
- S. "Mobile home" shall mean a moveable or portable housing structure, constructed to be towed on its own chassis and designed so as to be installed with or without a permanent foundation for occupancy as a residence and which is not manufactured housing.
- T. "Mortgage" shall mean a mortgage, mortgage deed, deed of trust or other instrument creating a first lien on a fee interest in real property located within the state.
- U. "Mortgage lender" shall mean any bank, bank or trust company, trust company, mortgage company, mortgage banker, national banking association, savings bank, savings and loan association, building and loan association and any other lending institution which meets the requirements set forth in Section 4 [now 2.60.24.8 NMAC] of the council rules and regulations.
- V. "Mortgage loan" shall mean a conventional loan:
- (1) secured by a mortgage;
 - (2) made to an eligible mortgagor to finance the acquisition, construction or rehabilitation of an owner-occupied single family residence in the state;
 - (3) the commitment for which was made by the mortgage lender after the date of submission by the mortgage lender of its application; and
 - (4) which meets the underwriting standards set forth in the guide for servicers. A mortgage loan shall not include a loan the proceeds of which are used, directly or indirectly, to refinance an existing mortgage loan or loans for the present mortgagor, unless the primary purpose of such mortgage loan is to finance the rehabilitation of such single family residence.
- W. "Mortgage pass-through security" shall mean a security issued by the authority in connection with the STM program representing an undivided interest in a pool of mortgage loans purchased by the authority pursuant to a notice of acceptance conforming to the requirements of the Pass-through Securities Investment Act.
- X. "NCUAB" shall mean the national credit union administration board.
- Y. "New construction" shall mean a single family residence that has not been previously occupied.
- Z. "Notice of acceptance" shall mean the authority's notice to the mortgage lender of the acceptance of its application.
- AA. "Owner-occupied" shall mean that the eligible mortgagor or the eligible assumptor must occupy the single family residence upon which a mortgage loan is made at the time the mortgage loan is closed or assumed.

BB. "Pass-through Securities Investment Act" shall mean Section 10 of Chapter 306 of the Laws of 1983 (being Section 7-27-5.3 NMSA 1978).

CC. "PUD-unit" shall mean a residential unit within a real estate development of separately owned lots with contiguous or noncontiguous areas or facilities usually owned by an owners' association in which the owners of the lots have a stock or membership interest, title to the real estate under the dwelling units being held by the association, and membership in the owners' association may not be severed from the ownership of individual units.

DD. "Rehabilitation" shall mean substantial renovation or reconstruction, including an increase of living area, of an existing single family residence, for example, to put such residence in a decent, safe and sanitary condition or to cause such single family residence to comply with applicable building codes, and shall not include routine or ordinary repairs, improvements or maintenance, such as interior decorating, remodeling or exterior painting, except in conjunction with other substantial renovation or reconstruction.

EE. "Residential use" shall mean that the structure is designed primarily for use as the principal residence of the occupant and shall exclude vacation or "second" homes. Portions of the structure designed or used for nonresidential purposes shall not exceed ten percent of the usable square feet of the structure.

FF. "Seller" shall mean the immediate past owner of the single family residence.

GG. "Severance tax permanent fund" shall mean the fund created pursuant to Section 7-27-3 NMSA 1978.

HH. "Single family residence" shall mean real estate or an interest therein in the state upon which is located or is to be constructed or located a structure or structures designed for residential use and consisting of a residence for one family, provided that the owner or owners of such structure or structures occupy such residence as their principal residence, and includes a condominium unit or units.

II. "State" shall mean the state of New Mexico.

JJ. "STM program" shall mean the severance tax permanent fund single family mortgage pooling program authorized by this rule 85-2 [now 2.60.24 NMAC].

KK. "IVA" shall mean the veterans' administration.

LL. "Zero lot line homes" shall mean a series of individual residences having architectural unity and a common wall within each unit.

[Recompiled 10/01/01]

2.60.24.8 REQUIREMENTS FOR MORTGAGE LENDERS: A mortgage lender which desires to participate in the STM program shall meet the following criteria:

A. If a commercial bank, its deposits must be insured by FDIC; if a savings institution, its deposits must be insured by FSLIC; and if a credit union, its deposits must be insured by NCUAB.

B. A mortgage lender must be approved by the FHA and VA to make FHA or VA loans.

C. A mortgage lender must demonstrate experience or expertise as determined by the authority in selling mortgage loans in the secondary market.

D. A mortgage lender must have a net worth of at least \$250,000, and

E. A mortgage lender originating mortgage loans for the STM program must have its principal office in the state, and be authorized to initiate mortgages in the state.

[Recompiled 10/01/01]

2.60.24.9 ALLOCATION OF FUNDS TO MORTGAGE LENDERS:

A. Funds available to the authority by reason of the sale of its mortgage pass-through securities shall be allocated by the authority based upon instructions from the council among eligible mortgage lenders submitting applications. A preference will be given to mortgage lenders who participated in the program authorized by the council's rule 84-1 [now 2.60.23 NMAC] (the "STM II program") in an amount equal to such mortgage lender's undelivered commitment under the STM II program. If any funds remain available after mortgage lenders with an available preference have received allocations, then the allocation of such available funds shall be based on the following criteria:

(1) the financial condition of the mortgage lenders submitting applications;

(2) the amount of residential mortgage loans made in the state by each mortgage lender submitting applications during a 24-month period preceding the date of the application;

(3) the aggregate principal balances of mortgage loans offered for sale by each mortgage lender compared with the aggregate principal balances of mortgage loans offered for sale by all mortgage lenders;

(4) the aggregate principal balances of mortgage loans for new construction offered for sale by each mortgage lender compared with the aggregate principal balances of mortgage loans for new construction offered for sale by all mortgage lenders;

(5) the authority's assessment of the ability of the mortgage lender or its designated servicer to act as servicer of mortgage loans to be sold to the authority based upon, among other things, the experience of the mortgage lender or its designated servicer in the secondary mortgage market;

(6) equitable geographic distribution of the funds throughout the state, with an emphasis on broad geographic locations served;

(7) the mortgage lenders' abilities to deliver allocations, evaluated on the basis of prior performance in any previous STM program; and

B. The council, or its designee, shall instruct the authority as to specific allocations of funds to individual mortgage lenders. These specific allocations shall be based upon the applications submitted by mortgage lenders, as well as other information available to the council and the authority which is pertinent to the criteria set forth in this section. Allocations of funds by the council and authority shall be conclusive.

[Recompiled 10/01/01]

2.60.24.10 OBLIGATIONS OF THE AUTHORITY: With respect to the STM program, the authority shall comply with the requirements set forth in this section as well as any other requirements which may be adopted from time to time by the council to ensure the continuity and efficacy of the STM program. The authority shall, through regulation or some other means:

A. provide that at least 60 percent of the initial aggregate principal balances are earmarked for mortgage loans for new construction and the authority may not accept deliveries from mortgage lenders of mortgage loans not for new construction in excess of 40 percent of the total aggregate allocations. Prior to the time that mortgage lenders deliver the entire total allocation, the issuance by the authority of the mortgage pass-through security, and the purchase of such security by the council, consisting of the mortgage loans already delivered, will comply with the requirements of the Pass-through Securities Investment Act.

B. provide that a fixed limit will be set on any pre-arranged commitments for new construction by mortgage lenders to builders or developers;

C. maintain a permanent manned office in New Mexico;

D. provide that interest rate subsidy plans be limited to buydowns and pledged accounts during the first three years of the mortgage loan;

E. provide that re-financings of an existing mortgage loan or loans for the present mortgagor shall not be included in the STM program, except in the case of a rehabilitation of a single family residence, or to replace construction or bridge financing;

F. provide that no loans on mobile homes may be purchased by mortgage lenders for sale to the authority, however the authority may consider purchasing mortgage loans on manufactured housing;

G. provide that no more than 50 percent of the aggregate value of the mortgage loans may be on condominiums, PUD-units and zero lot line homes;

H. provide that each mortgage loan to be included in the mortgage pass-through security be made on an owner-occupied single family residence;

I. provide that all mortgage loans issued pursuant to the STM program shall be sold to the authority within nine months of receipt by the mortgage lender of notice, of acceptance from the authority.

[Recompiled 10/01/01]

2.60.24.11 REQUIREMENTS FOR MORTGAGE LOANS: All mortgage loans which are included in any mortgage pass-through security purchased by the council shall contain the following minimum criteria:

A. be originated by a qualified mortgage lender;

B. be secured by a single family residence;

C. be a conventional mortgage;

D. have a maximum term which shall not be greater than thirty years and a minimum term which shall not be less than twenty years;

E. be made to an eligible mortgagor;

F. contain no prepayment penalties;

G. be assumable by an eligible assumptor, if the single family residence will be owner-occupied after assumption and the eligible assumptor meets the applicable underwriting criteria;

- H. not exceed the dollar limit for FNMA approved mortgages, as in effect at the time the loans are originated;
 - I. have a maximum loan-to-value ratio of 80 percent, however mortgage loans with loan-to-value ratios of up to and including 95 percent may be, considered for inclusion if such mortgage loans are subject to primary mortgage insurance in an amount sufficient to provide that the uninsured portion of the mortgage loan does not exceed 72 percent of the value of the property;
 - J. permit the mortgage lender to charge, as an origination fee, no more than 2 percent of the amount of the mortgage loan, to be allocated between the eligible mortgagor and the seller; and
 - K. such other requirements that an independent nationally recognized bond rating service would require to give a security purchased under the "Pass-through Securities Investment Act" a AA rating or higher.
- [Recompiled 10/01/01]

2.60.24.12 FEES AND CHARGES:

- A. A commitment fee or fees shall be established and collected by the authority from each mortgage lender filing an application in such amount or amounts as the authority may deem appropriate. All or a portion of the commitment fee shall be nonrefundable. The commitment fee or fees may be used for, among other purposes, reimbursing the authority for all or part of the reasonably-expected administrative costs incurred by the authority in connection with the issuance of the mortgage pass-through securities and the administration of the STM program.
 - B. The authority may retain the difference between the interest rate on the mortgage loan and the face rate of the mortgage pass-through security to be purchased by the council, as established by the purchase agreement between the council and the authority, for its reasonably expected costs of acting as the master servicer for the mortgage pass-through security and to compensate lending institutions which act as sub-servicing agents of the authority.
 - C. The authority may establish such other charges, premiums and penalties as it shall deem to be necessary in connection with the administration of the STM program.
- [Recompiled 10/01/01]

2.60.24.13 YIELD TO SEVERANCE TAX PERMANENT FUND: The yield to the severance tax permanent fund on the mortgage pass-through security purchased by the council pursuant to the provisions of the Pass-through Securities Investment Act shall be set from time to time by the council in accordance with the Pass-through Securities Investment Act.

[Recompiled 10/01/01]

2.60.24.14 AMENDMENT OF COUNCIL RULES AND REGULATIONS: The council rules and regulations may be amended by the council at any time and from time to time.

[Recompiled 10/01/01]

HISTORY OF 2.60.24 NMAC:

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

85-2, Rules and Regulations of the New Mexico State Investment council Pertaining to the Third Severance Tax Permanent Fund Single Family Mortgage Pooling Program, 3-28-85.

History of Repealed Material: [RESERVED]