

This rule was filed as SIC Rule 87-2.

TITLE 2 PUBLIC FINANCE
CHAPTER 60 INVESTMENT AND DEPOSIT OF PUBLIC FUNDS
PART 29 COLLATERAL POLICY FOR NEW MEXICO BANKS

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

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

2.60.29.3 STATUTORY AUTHORITY: Sections 7-27-5.2 [repealed], and including but not limited to, Sections 6-10-10, 6-10-16, 6-10-17, 6-10-18, 6-10-20, 6-10-24.1, 6-10-29 and 6-10-35 NMSA 1978.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]

2.60.29.4 DURATION: [Permanent]
[Recompiled 10/01/01]

2.60.29.5 EFFECTIVE DATE: [Filed October 5, 1987]
[Recompiled 10/01/01]

2.60.29.6 OBJECTIVE: [RESERVED.]
[Recompiled 10/01/01]

2.60.29.7 DEFINITIONS: [RESERVED.]
[Recompiled 10/01/01]

2.60.29.8 COLLATERAL POLICY FOR NEW MEXICO BANKS:

A. In the exercise of its authority under Sections 7-27-5.2 [repealed], and including but not limited to, Sections 6-10-10, 6-10-16, 6-10-17, 6-10-18, 6-10-20, 6-10-24.1, 6-10-29 and 6-10-35 NMSA 1978, the state investment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 under its authority. As a first step towards achieving this objective, it hereby directs the state investment officer to conduct a risk assessment of banks holding deposits of severance tax permanent fund monies under the council's authority. The risk-assessment will include a determination of each bank's primary capital to asset ratio, its net operating income/total average assets and its non-performing loans/primary capital. If a bank's primary capital to asset ratio is 6 percent or greater, its net operating income/total average asset is .61 percent or greater and its non-performing loans/primary capital is 34.9 percent or less, then the bank shall be required to maintain collateral at the minimum level set forth in Section 7-27-5.2 [repealed] or 6-10-17 NMSA 1978, as applicable. If a bank does not meet these three qualifications for a minimum level of collateral under Section 7-27-5.2 [repealed] or 6-10-17, the state investment officer is hereby directed to cease making any additional deposits of public money into the bank and to withdraw deposits as provided herein, unless the bank provides increased levels of collateral in accordance with the schedule set forth below.

B. The investment officer shall request increased collateral from any bank which holds a deposit of public money within the council's authority and does not meet the qualifications set forth above for a minimum level of collateral under Section 7-27-5.2 [repealed] or 6-10-17 in accordance with the following schedule:

- (1) If a bank's primary capital to asset ratio (as defined by the FDIC) is:
 - (a) 5 percent to 6 percent..... a bank shall be required to maintain collateral in the form of securities with an aggregate market value equal to 75 percent of the amount of the deposit, or mortgages with an aggregate market value equal to 90 percent of the amount of the deposit;
 - (b) less than 5 percent..... a bank 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 mortgages with an aggregate market value equal to 110 percent of the amount of the deposit.
- (2) If the ratio of a bank's net operating income (annualized after taxes) to its total average assets is:

(a) .6 percent - .51 percent..... a bank shall be required to maintain collateral in the form of securities with an aggregate market value equal to 75 percent of the amount of the deposit, or mortgages with an aggregate market value equal to 90 percent of the amount of the deposit.

(b) Less than .51 percent..... a bank 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 mortgages with an aggregate market value equal to 110 percent of the amount of the deposit.

(c) Provided, however, a newly chartered bank shall be exempt from the requirements of this subsection for the first year of its operations, 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 the ratio pursuant to this subsection.

(3) If the ratio of a bank's non-performing loans (defined as loans which are at least 90 days past due and accruing or non-accruing) to the bank's primary capital is:

(a) 35 percent - 49.9 percent..... a bank shall be required to maintain collateral in the form of securities with an aggregate market value equal to 75 percent of the amount of the deposit, or mortgages with an aggregate market value equal to 90 percent of the amount of the deposit.

(b) above 49.9 percent..... a bank 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 mortgages with an aggregate market value equal to 110 percent of the amount of the deposit.

(4) Should the risk assessment ratios under Sections (a) (b) and (c) [now Paragraphs (1), (2) and (3) of Subsection B of 2.60.29.8 NMAC] result in different levels of collateral for a bank (i.e., 50 percent, 75 percent, 90 percent, 100 percent and 110 percent), the state investment officer shall request the highest collateral level required under the three sections.

(5) If a bank is unable to meet the increased collateral level required by sections (a) (b) and (c) [now Paragraphs (1), (2) and (3) of Subsection B of 2.60.29.8 NMAC], above, the state investment officer shall cease to make deposits and shall make withdrawals of deposits in the order in which they would otherwise mature down to an amount which can be collateralized at an appropriate level, as above specified. The collateral levels required by sections (a), (b), and (c), above [now Paragraphs (1), (2) and (3) of Subsection B of 2.60.29.8 NMAC], shall be required until the ratios of the bank as determined by the risk-assessment, return to a level which allows collateral to be kept at a lower level under sections (a) (b) and (c) [now Paragraphs (1), (2) and (3) of Subsection B of 2.60.29.8 NMAC], or at the statutory minimum level, as appropriate.

(6) For the purpose of this policy "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, Sec. 23, N.M. Constitution.

(7) For the purposes of this policy, "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. The "market value" of such mortgages, as referred to in this policy, shall be determined by reference to the value of the mortgage collateral if sold in the secondary market and not the appraised value of the realty pledged by the mortgages.

(8) The withdrawal of deposits shall not be subject to the assessment of a penalty for early withdrawal, except to the extent required to be imposed by federal law and in that event only the minimum penalty required to be imposed shall be imposed by the bank.

(9) The figures to be used by the investment officer in the risk-assessment shall be calculated by each bank from the quarterly call statements and shall be furnished to the investment officer no later than on 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 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 100 percent or 110 percent of the amount of the deposit, as applicable.

(10) Any qualifying bank or savings and loan association 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 council or state investment officer is subject to a penalty by the director of the

financial institutions division 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.

(11) 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, who shall decide whether additional collateral will be required.

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

(13) If a bank believes that exceptional circumstances exist which indicate that it would not be appropriate for the investment officer to take any of the actions listed above, the bank shall appear before the next meeting of the state investment council and present its position. The investment council shall at that time vote on whether an exception to the policy will be allowed.

(14) The investment officer is further directed to incorporate the terms of this policy into any future depository and collateral agreements and to take immediate and prudent steps to initiate this policy. In no event shall the investment office fail to have this policy in effect with respect to all banks later than January 1, 1986.

(15) Nothing herein shall restrict the state treasurer, state investment officer, or, the state investment council from the lawful exercise of rights and duties conferred upon them by law.

[Recompiled 10/01/01]

HISTORY OF 2.60.29 NMAC:

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

Rule 87-2, Collateral Policy for New Mexico Banks, 10-5-87.

History of Repealed Material: [RESERVED]