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TITLE 2 PUBLIC FINANCE
CHAPTER 60 INVESTMENT AND DEPOSIT OF PUBLIC FUNDS
PART 30 COLLATERAL POLICY FOR NEW MEXICO SAVINGS AND LOAN ASSOCIATIONS

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

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

2.60.30.3 STATUTORY AUTHORITY: Sections 7-27-5.2 [repealed], and including but not limited to, Sections 6-10-10, 6-10-16, 6-10-17, 6-10-18, 6-10-20, 6-10-24.1, 6-10-29 and 6-10-35 NMSA 1978.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

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

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

2.60.30.6 OBJECTIVE: [RESERVED]
[Recompiled 10/01/01]

2.60.30.7 DEFINITIONS: [RESERVED]
[Recompiled 10/01/01]

2.60.30.8 COLLATERAL POLICY FOR NEW MEXICO SAVINGS AND LOAN ASSOCIATIONS:

A. In the exercise of its authority under Sections 7-27-5.2 [repealed], and including but not limited to, Sections 6-10-10, 6-10-16, 6-10-17, 6-10-18, 6-10-20, 6-10-24.1, 6-10-29 and 6-10-35 NMSA 1978, the state investment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 the level of risk to deposits of severance tax permanent fund monies made pursuant to its authority. As a first step towards achieving this goal, the council hereby directs the state investment officer to conduct a risk-assessment of savings and loans holding deposits of severance tax permanent fund monies. The risk assessment will include a determination of each savings and loan's net worth to average asset ratio, its average net income before taxes/total average assets and its after-tax losses. If a savings and loan's net worth to average asset ratio is 3 percent or greater, its four quarter average net income either before or after taxes/four quarter average assets is .30 percent or greater, and it has not had two or more consecutive quarters of after tax losses, the savings and loan should be to maintain collateral at the statutory minimum level set forth in Section 7-27-5.2 [repealed] NMSA 1978 or Section 6-10-17 NMSA 1978, as applicable. If a savings and loan does not meet these 3 qualifications for a minimum level of collateral under Sections 7-27-5.2 [repealed] or Section 6-10-17, the investment officer is hereby directed to cease making any additional deposits of severance tax permanent fund monies into the savings and loan and to withdraw deposits as provided herein, unless the savings and loan provides increased levels of collateral in accordance with the schedule set forth below.

B. The investment officer shall request increased collateral from any savings and loan which holds a deposit of severance tax permanent funds within the council's authority and does not meet the qualifications set out 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 savings and loan's net worth to average asset ratio (defined as line number 800/line 810 section C FHLB quarterly report) is:

(a) 2 percent to 3 percent..... a savings and loan shall be required to maintain collateral of deposit 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 deposit;

(b) less than 2 percent.... a savings and loan shall be required to maintain collateral in the form of securities with an aggregate market value equal to 100 percent of the amount of deposit, or mortgages with an aggregate market value equal to 110 percent of the amount of the deposit.

(2) If the ratio of the savings and loan's four quarter average net income either before or after taxes (defined as line 830 plus lines 320 and 330 section E FHLB quarterly report) to its four quarter average assets is:

(a) .2 percent to .3 percent... a savings and loan 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 .2 percent... a savings and loan 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 savings and loan shall be exempt from the requirements of this subsection [now Subparagraphs (a) and (b) of Paragraph (1) and Subparagraphs (a) and (b) of Paragraph (2) of Subsection B of 2.60.30.8 NMAC] for the first year of its operations, and in its second year of operation, the savings and loan 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 [now Subparagraphs (a) and (b) of Paragraph (1) and Subparagraphs (a) and (b) of Paragraph (2) of Subsection B of 2.60.30.8 NMAC].

(3) If a savings and loan experiences two consecutive quarters of after-tax losses (such losses to be determined by reference to Section E of the federal home loan bank quarterly report), collateral shall be required in the form of mortgages with an aggregate market value equal to 90 percent of the amount of the deposit, or securities with an aggregate market value equal to 75 percent of the amount of the deposit. If the savings and loan experiences three consecutive quarters of after-tax losses, collateral shall be required in the form of mortgages with an aggregate market value of 110 percent of the amount of the deposit, or securities with an aggregate market value equal to 100 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 Section 2.60.30.8 NMAC] result in different levels of collateral for a savings and loan association (ie., 50 percent, 75 percent, 90 percent, 100 percent and 110 percent), the state investment office shall request the highest collateral level required under the three Sections.

(5) If a savings and loan association 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 2.60.30.8 NMAC] above, the state investment officer 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 increased collateral levels required by Sections (a), (b) and (c) [now Paragraphs (1), (2) and (3) of Subsection B of 2.60.30.8 NMAC], above, shall be required until the ratios of the savings and loan determined by the risk-assessment return to a level which allows collateral to be kept at a lower level under sub-sections (a), or (c), [now Paragraphs (1) and (3) of Subsection B of 2.60.30.8 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, as amended and effective May 21, 1986, Art IV, Sec. 23, N.M. Constitution.

(7) 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.

(8) 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.

(9) 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 savings and loan association.

(10) The figures to be used by the investment officer in the risk-assessment shall be calculated by each savings and loan from the quarterly federal home loan bank report 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 savings and loan shall be certified in writing by the president of the savings and

loan, an executive officer of the savings and loan, 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, as needed, to assess the risk level of any savings and loan. If a savings and loan 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.

(11) 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.

(12) The investment officer is also directed to require each savings and loan 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.

(13) 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.

(14) If a savings and loan 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 savings and loan 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.

(15) 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.

(16) 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 2.60.30 NMAC:

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

Rule 87-3, Collateral Policy for New Mexico Savings and Loan Associations, 10-5-87.

History of Repealed Material: [RESERVED]