

This rule was filed as 12 NMAC 15.1.

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 15 FINANCIAL INSTITUTIONS - GENERAL
PART 1 ANNUITIES

12.15.1.1 ISSUING AGENCY: Financial Institutions Division, Regulation and Licensing Department, 725 St. Michael's Drive, Santa Fe, New Mexico 87501. Telephone No. (505) 827-7100
[12/15/95; Recompiled 10/15/01]

12.15.1.2 SCOPE: All New Mexico state chartered lending institutions.
[12/15/95; Recompiled 10/15/01]

12.15.1.3 STATUTORY AUTHORITY: Sections 58-1-51 and 58-1-54 NMSA 1978.
[12/15/95; Recompiled 10/15/01]

12.15.1.4 DURATION: Permanent.
[12/15/95; Recompiled 10/15/01]

12.15.1.5 EFFECTIVE DATE: December 15, 1995[unless a later date is cited at the end of a section].
[12/15/95; Recompiled 10/15/01]

12.15.1.6 OBJECTIVE: The objective of Part 1 [now 12.15.1 NMAC] is to establish the framework within which a New Mexico lending institution or its affiliate may plan a program and obtain licensure for the distribution and sale of annuities products in order to: bring about parity between state and federally-chartered lending institutions; promote public convenience and advantage in the sale of annuities by state-chartered lending institutions; provide uniformity in the disclosure of annuities products to assist the public to distinguish between a deposit product that is insured by the federal deposit insurance corporation ("FDIC") or by the national credit union administration ("NCUA") and an annuity that is not insured by the FDIC or NCUA; and ensure that lending institutions, affiliates and/or annuity agents market annuities in a safe and sound manner.
[12/15/95; Recompiled 10/15/01]

12.15.1.7 DEFINITIONS:

A. "Affiliate" means a person that directly or indirectly is controlled by, is under common control with or controls another person as defined in Section 59A-37-2 NMSA 1978.

B. "Annuity" means a contract under which an obligation is assumed by the issuer to make periodic payments for a specific term or terms where the making or continuance of all or some such payments or the amount of any such payment is dependent upon continuance of human life. This definition is found in Section 59A-20-2 NMSA 1978. "Annuity" also includes variable contracts as provided in Section 59A-20-30 NMSA 1978.

C. "Annuity agent" means an individual who is appropriately licensed and registered, if applicable, to sell annuities in the state of New Mexico.

D. "Bank holding company" means any company which has control over any bank or over another company that is or becomes a bank holding company as defined by Section 58-1-2B NMSA 1978.

E. "Lending institution" means any institution whose primary business is accepting deposits and lending money from a place of business in the state, including banks, savings and loan associations and credit unions but does not include insurance companies as defined by Section 59A-12-10(C)1 NMSA 1978.

F. "Person" means an individual, corporation, association, partnership, joint stock company, trust, unincorporated organization or any similar entity or combination of entities as defined in Section 59A-37-2F NMSA 1978.

G. "Third-party provider" means insurance companies, securities broker dealers, insurance brokerages and agencies and all other authorized nonbank providers, whether or not an affiliate of the lending institution, of annuities and variable contract products.

H. "Underwrite" means to directly insure, undertake, guarantee or assume liability for annuity contracts as a principal in whole or in part.

[12/15/95; Recompiled 10/15/01]

12.15.1.8 ANNUITY SALES:

A. A lending institution or its affiliate may engage in the sale of annuities subject to the following.

(1) All lending institution/affiliate employees who are engaged in the sale of annuities must be licensed to the extent required by the Insurance Code Section 59A-12-6 NMSA 1978.

(2) The lending institution/affiliate must provide and retain a copy of the disclosure and written statement signed by the purchaser of the annuity as provided by Section 13 of this regulation [now 12.15.1.13 NMAC].

(3) The lending institution may provide to affiliates and/or third-party providers only customer name, address, telephone number and types of products owned. It may not share confidential information, such as specific or aggregate dollar amounts of investments, deposit balances, net worth, etc., without the customer's prior acknowledgment and written consent. The written consent will be on a form specified by the financial institutions division. This does not limit the lending institution's obligation to provide information to the insurer in the sale of an annuity product.

(4) the lending institution may not underwrite annuities.

B. A lending institution or its affiliate may enter into an arrangement with a third-party provider under which the lending institution/affiliate may refer customers directly to the annuity agent for the sale of annuities. A lending institution or its affiliate may enter into arrangements with a third-party provider to provide space on lending institution premises for sale of annuities. Any arrangement between a lending institution or its affiliate and a third party provider that utilizes space on the premises of the lending institution to facilitate the sale of annuities shall be subject to the following general conditions.

(1) The arrangements between a lending institution/affiliate and a third party provider must be governed by a written agreement that:

- (a) sets forth the responsibilities of the parties;
- (b) specifies the compensation to be received by the lending institution;
- (c) requires that annuities may be sold only by an annuity agent;
- (d) reserves the right of the lending institution to disapprove the placement or retention of any annuity agent;

(e) requires the annuity agent to provide and retain copies of the disclosure and written statement signed by the purchaser of the annuity in accordance with Section 13 [now 12.15.1.13 NMAC];

(f) requires the annuity agent or third party provider to receive prior approval of the lending institution before engaging in any advertising/solicitation that identifies the name, address or telephone number of the lending institution.

(2) When the annuities sales program is operated independently by a person that is not an employee or affiliate of the lending institution and annuities are sold on the premises of the lending institution, the lending institution must include in the written agreement with the third party provider language that expressly:

(a) negates a partnership or joint venture between the lending institution and the annuity agent; and

(b) states that the lending institution has no right to, and may not attempt to, exercise control over the sale of annuities by the annuity agent other than as expressly permitted by this regulation.

(3) When the annuity sales program is operated by an annuity agent who is also an employee of the lending institution or affiliate, the written agreement between the lending institution and third-party provider shall:

- (a) define the supervisory responsibilities of each party to the agreement;
- (b) specify the rights of the respective parties to control the compensation of the annuity agent;
- (c) specify that the annuity agent will not use bank customer confidential information for solicitation of annuity products, other than procedures otherwise expressly authorized by this regulation;

(d) specify that if a dual employee is terminated by either party to the agreement, the party causing the termination shall notify the other party of such termination and the reasons, if any, therefore;

(e) specify that each party to the agreement shall notify the other party of any investigation or proceeding by a regulatory or law enforcement authority regarding the employee except as otherwise prohibited by law.

C. A lending institution shall serve written notice to the financial institutions division when it has entered into an agreement required by this regulation.

[12/15/95; Recompiled 10/15/01]

12.15.1.9 LICENSING PROCEDURES: Annuity agents as defined in this regulation must be licensed by the New Mexico department of insurance to sell annuities.
[12/15/95; Recompiled 10/15/01]

12.15.1.10 LENDING INSTITUTION RESPONSIBILITY: The lending institution has on-going responsibility to ensure that the annuities sales program is in compliance with the provisions of this regulation and is consistent with the institution's strategies and objectives.

A. The lending institution shall establish a policy addressing the management of the sale of annuities. Such policy must contain provisions to ensure compliance with the limitations and restrictions enumerated in this regulation. The compliance function should be independent of the operating sales program and report directly to the lending institution's board of directors or a designated committee thereof. The policy shall specifically prohibit the lending institution from selling or providing to any person other than a third party provider the name of an individual that has purchased annuities through that lending institution without the customer's prior acknowledgment and written consent.

B. The lending institution shall formulate, prior to engaging directly in the sale of annuities or prior to entering into an agreement with a third party provider, written objectives, and strategies to achieve those objectives, and shall designate an senior officer to be responsible for oversight of the on-premises annuities sales program. Policy objectives, including the process for selecting and continuing review of the contracted third party provider, and strategies to achieve those objectives should be reviewed at least annually by the lending institution's board of directors.

[12/15/95; Recompiled 10/15/01]

12.15.1.11 ADVERTISING AND PROMOTION: The promotion and sale of annuities must be effected in such a manner as to avoid confusion between federally-insured deposit products offered by the lending institution and the non-federally insured annuities sold.

A. Advertisements or other promotional material must be accurate and not misleading or deceptive.

B. Advertising materials prepared by the annuity agent or third party provider may be included in mailings by the lending institution/affiliate.

C. Advertisements and promotional materials regarding annuities sold on the premises of the lending institution must include the disclosures enumerated in Section 13.3 [now Subsection C of 12.15.1.13 NMAC].

D. Any marketing efforts engaged in, or marketing materials distributed by, the annuity agent or third party provider relating to the sale of annuities must first receive the prior approval of the lending institution/affiliate.

[12/15/95; Recompiled 10/15/01]

12.15.1.12 ADEQUATE SEPARATION OF FACILITIES:

A. The space utilized by the annuity agent to transact business with the public must be distinct from the area where retail deposits are taken in such a manner as to prevent confusion in the public's mind between the lending institution and the annuity agent.

B. The space utilized by the annuity agent to transact business with the public must be separately identified through the use of signs, labeling, etc. so that the public will understand that it is doing business with an annuity agent and not the federally insured lending institution.

C. The space utilized by the annuity agent shall contain the disclosure notice, conspicuously posted, required in Section 13 [now 12.15.1.13 NMAC].

[12/15/95; Recompiled 10/15/01]

12.15.1.13 DISCLOSURES: A lending institution/affiliate or any third-party provider that sells or arranges for the sale of annuities on the premises of a lending institution shall:

A. conspicuously post a notice that is clearly visible to anyone who may purchase annuities that annuities are not deposit accounts insured by a federal deposit insuring agency;

B. orally inform a prospective purchaser of annuities that annuities are not deposit accounts insured by a federal deposit insuring agency;

C. provide a written disclosure to the customer containing the following statements before a sale of annuities is completed:

(1) annuities are not lending institution deposits and are not insured by its federal deposit insuring agency (FDIC, NCUA);

- (2) annuities are not obligations of, or guaranteed by, the lending institution; and
- (3) annuities may involve investment risks, including possible loss of principal.

D. require before a sale of annuities is completed that the annuity agent obtain a written statement signed by the purchaser of the annuity stating that the purchaser has received the oral and written notices required by this section.

[12/15/95; Recompiled 10/15/01]

12.15.1.14 FEDERAL/STATE REGULATIONS: It is recognized that the federal deposit insurance corporation, the federal reserve system, the comptroller of the currency, the national credit union administration, the office of thrift supervision and the financial institutions division have promulgated, or may, in the future, promulgate regulations governing the manner in which a lending institution or any of its affiliates and an annuity agent may engage in the sale of annuities. It is further recognized that there may exist differences in scope and coverage between this regulation and those promulgated by federal regulatory agencies. It is not the intent of this regulation to permit any practice which is not permitted by the appropriate state or federal agency. To the contrary, besides any other restriction or limitation stated herein, each lending institution or any of its affiliates and each annuity agent must fully comply with the regulations of the applicable state or federal regulatory agency.

[12/15/95; Recompiled 10/15/01]

HISTORY OF 12.15.1 NMAC: [RESERVED]