

This rule was filed as 12 NMAC 16.3.5.

**TITLE 12 TRADE, COMMERCE AND BANKING**  
**CHAPTER 16 BANKING**  
**PART 35 LEASING ACTIVITIES**

**12.16.35.1 ISSUING AGENCY:** Financial Institutions Division of the Regulation and Licensing Department, P.O. Box 25101, Santa Fe, New Mexico 87504.  
[1/31/74, 11/15/96; Recompiled 10/15/01]

**12.16.35.2 SCOPE:** All banks chartered by the state of New Mexico.  
[1/31/74; Recompiled 10/15/01]

**12.16.35.3 STATUTORY AUTHORITY:** Section 58-1-26B NMSA 1978 and Section 58-1-54 NMSA 1978.  
[1/31/74; Recompiled 10/15/01]

**12.16.35.4 DURATION:** Permanent.  
[1/31/74; Recompiled 10/15/01]

**12.16.35.5 EFFECTIVE DATE:** January 31, 1974, unless a later date is cited at the end of a section or paragraph.  
[1/31/74, 11/15/96; Recompiled 10/15/01]  
[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

**12.16.35.6 OBJECTIVE:** This regulation is promulgated for the purpose of granting to state banks powers similar to those granted to national bank by 12 C.F.R. Section 7.3300 and Section 7.3400.  
[1/31/74, 11/15/96; Recompiled 10/15/01]

**12.16.35.7 DEFINITIONS:**

A. A "net lease" is a lease under which the bank will not, directly or indirectly, provide or be obligated to provide for:

- (1) the servicing, repair or maintenance of the leased property during the lease term;
- (2) the purchasing of parts and accessories for the leased property; however, improvements and additions to the leased property may be leased to the lessee upon its request in accordance with the full payment requirements of this ruling;
- (3) the loan of replacement or substitute property while the leased property is being serviced;
- (4) the purchasing of insurance for the lessee, except where the lessee has failed in its contractual obligation to purchase or maintain the required insurance;
- (5) the renewal of any license or registration for the property unless such action by the bank is clearly necessary to protect its interest as an owner or financier of the property.

B. A "full-payout" lease is one from which the lessor can reasonably expect to realize a return of its full investment in the leased property plus the estimated cost of financing the property over the term of the lease from:

- (1) rentals;
- (2) estimated tax benefits; and
- (3) the estimated residual value of the property at the expiration of the initial term of the lease.

[11/15/96; Recompiled 10/15/01]

**12.16.35.8 LEASING ACTIVITIES:**

A. A state bank may purchase or construct a municipal building, such as a school building or other similar public facility, and, as holder of legal title, lease the same to a municipality or other public authority having resources sufficient to make payment of all rentals as they become due. The lease agreement shall provide that upon its expiration the lessee will become owner of the building or facility.

B. A state bank may:

(1) become the legal or beneficial owner and lessor of specific personal property or otherwise acquire such property at the request of the lessee who wishes to lease it from the bank; or

(2) become the owner and lessor of personal property by purchasing the property from another lessor in connection with its purchase of the related lease; and

(3) incur obligations incidental to its position as the legal or beneficial owner and lessor of the leased property. If the lease is a net, full-payout lease representing a noncancelable obligation of the lessee, notwithstanding the possible early termination of that lease.

C. Full-payment calculations on leases of personal property to domestic governmental entities may be based on reasonably anticipated future transactions or renewals.

D. If in good faith a state bank believes that there has been an unanticipated change in conditions which threatens its financial position by significantly increasing its exposure to loss, the limitations contained in paragraphs 8.2 and 8.3 of this regulation [ now Subsections B and C of 12.16.35.8 NMAC] shall not prevent the bank:

(1) as owner and lessor under a net, full-payout, lease, from taking reasonable and appropriate action to salvage and protect the value of the property or its interests arising under the lease; or

(2) as the assignee of a lessor's interest in a lease, from becoming the owner and lessor of the leased property pursuant to its contractual right, or from taking any reasonable and appropriate action to salvage or protect the value of the property or its interests arising under the lease.

E. The limitations in paragraphs 8.2 and 8.3 of this regulation [now Subsections B and C of 12.16.35.8 NMAC] do not prohibit a state bank from including any provisions in a lease, or from making any additional agreements, to protect its financial position or investment in the circumstances set forth in paragraphs 8.4A and B of this regulation [now Paragraphs (1) and (2) of Subsection D of 12.16.35.8 NMAC].  
[1/31/74, 11/15/96; Recompiled 10/15/01]

**HISTORY OF 12.16.35 NMAC:**

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

FID 74-1, Order 74-1, Regulation 74-1, Relative to State Banks, filed 1/21/74.

History of Repealed Material: [RESERVED]