

This rule was filed as 12 NMAC 16.4.11.

**TITLE 12 TRADE, COMMERCE AND BANKING**  
**CHAPTER 16 BANKING**  
**PART 61 INVESTMENTS IN ENTERPRISES CONDUCTING BUSINESS RELATED TO BANKING**

**12.16.61.1 ISSUING AGENCY:** Financial Institutions Division of the Regulation and Licensing Department, Post Office Box 25101, Santa Fe, New Mexico 87504.  
[11/15/96; Recompiled 10/15/01]

**12.16.61.2 SCOPE:** All banks chartered by the state of New Mexico.  
[11/15/96; Recompiled 10/15/01]

**12.16.61.3 STATUTORY AUTHORITY:** Sections 58-1-51 and 58-1-54 NMSA 1978.  
[11/15/96; Recompiled 10/15/01]

**12.16.61.4 DURATION:** Permanent.  
[11/15/96; Recompiled 10/15/01]

**12.16.61.5 EFFECTIVE DATE:** October 31, 1996, unless a later date is cited at the end of a section or paragraph.  
[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[Compiler's note: The words *or paragraph*, above, are no longer applicable.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.]

**12.16.61.6 OBJECTIVE:** The objective of this regulation is to confirm the authority of New Mexico state banks to invest and participate in businesses with various business organizational forms, which only conduct business a state bank could legally conduct directly.  
[11/15/96; Recompiled 10/15/01]

**12.16.61.7 DEFINITIONS:** "Activities that are incidental to the business of banking" means activities permissible under paragraphs 1863 and 1864(f) of the Bank Service Corporation Act (12 U.S.C. Sections 1861-1867), except as otherwise restricted by applicable state law; and other activities approved by the director of the financial institutions division.  
[11/15/96; Recompiled 10/15/01]

**12.16.61.8 BUSINESSES RELATED TO BANKING:**

A. A state bank may invest and participate in business enterprises with various forms of business organization including, but not limited to, corporations, limited liability companies, limited partnerships and joint ventures; provided the following conditions are met:

- (1) the activities of the enterprise in which the investment is made must be limited to activities that are part of or are incidental to the business of banking, and are legal activities for a state bank to conduct directly;
- (2) the bank must be able to prevent the enterprise from engaging in activities that do not meet this standard;
- (3) the bank's loss exposure must be limited as a legal and accounting matter, and the bank must not have open-ended liability for the obligations of the enterprise;
- (4) the investment must be convenient or useful in carrying out the bank's business, and not merely a passive or speculative investment unrelated to that bank's business;
- (5) the investment in an enterprise must not be more than five percent of the bank's tier one capital.

B. The enterprise in which the investment is made may include investment and participation by non-bank businesses; provided participation by the non-bank businesses is required to facilitate activities conducted by the enterprise, and is not merely a passive or speculative investment by the non-bank businesses.

C. A state bank which wishes to invest and participate in or perform new activities in an entity organized under this regulation shall apply for the prior approval of the director of the financial institutions division.

The application shall include a strategic business plan for the proposed organization or activity, with form and content acceptable to the director. If the application is approved the director may impose one or more legal or supervisory conditions in connection with the approval.

D. All provisions of banking laws and regulations applicable to the operations of the bank shall be equally applicable to the operations of the enterprise in which the investment is made.

E. Pertinent book figures of the bank and the enterprise shall be consolidated for the purpose of applying applicable statutory limitations.

F. Each enterprise in which a New Mexico state bank is the principal bank investor shall be subject to examination and supervision by the director of the financial institutions division in the same manner and to the same extent as the investing bank, and shall be assessed a fee determined by the director to cover the cost of examination. If, upon examination, the director finds that the enterprise is created or operated in violation of law or regulation or that the manner of operation is unsafe or unsound, the bank will be directed to take appropriate remedial action, which may include divesting its interest in the enterprise.

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

**HISTORY OF 12.16.61 NMAC:** [RESERVED]