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TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 20 SAVINGS AND LOAN ASSOCIATIONS
PART 48 SERVICE CORPORATIONS

12.20.48.1 ISSUING AGENCY: Financial Institutions Division of the Regulation and Licensing Department, 725 St. Michael's Drive, Santa Fe, New Mexico 87504. Telephone No. (505) 827-7100 [11/17/80; 9/15/97; Recompiled 10/15/01]

12.20.48.2 SCOPE: All savings and loan associations chartered by the state of New Mexico. [9/15/97; Recompiled 10/15/01]

12.20.48.3 STATUTORY AUTHORITY: Section 58-10-50 NMSA 1978. [9/15/97; Recompiled 10/15/01]

12.20.48.4 DURATION: Permanent. [9/15/97; Recompiled 10/15/01]

12.20.48.5 EFFECTIVE DATE: November 17, 1980, unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective September 15, 1997. [11/17/80; 9/15/97; 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[Compiler's note: The words *or paragraph*, above, are no longer applicable.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.]

12.20.48.6 OBJECTIVE: The objective of this sub-part [now part] is to bring to state savings and loan associations the authority to invest in service corporations within the provisions of this sub-part [now part]. [9/15/97; Recompiled 10/15/01]

12.20.48.7 DEFINITIONS:

A. "Aggregate outstanding investment" means the sum of amounts paid to acquire capital stock or securities and amounts invested in obligations of service corporations less amounts received from the sale of capital stock or securities of service corporations and amounts paid to the association to retire obligations of service corporations.

B. "Conforming loan" means a loan or portion thereof which an association may make under any provision of the Savings and Loan Act or regulations promulgated thereunder. A guarantee or take-out commitment of a loan which could have been made by an association as a conforming loan may be deemed a conforming loan for purposes of this regulation if the association complied with all requirements of the act and regulations, as though it were itself making the loan subject to its guarantee or take-out commitment.

C. "Consumer loan" means a loan to one or more individuals, unsecured or secured by goods used or bought primarily for personal, family or household purposes.

D. "Joint venture" means any joint undertaking by a service corporation or a wholly owned subsidiary thereof with one or more persons or legal entities in any form, including a joint tenancy, tenancy in common or partnership, and including investment in a corporation other than a wholly-owned subsidiary.

E. "Subsidiary" includes a wholly-owned subsidiary and any joint venture in which a service corporation or wholly-owned subsidiary thereof:

- (1) owns, controls or holds with power to vote more than 25 percent of the capital stock;
- (2) is a general partner; or
- (3) is a limited partner and has contributed more than 25 percent of the limited partnership's capital.

F. "Unsecured debt" and "unsecured loan" excludes accounts payable incurred in the ordinary course of business and paid within 60 days.

[11/17/80; 9/15/97; Recompiled 10/15/01]

12.20.48.8 GENERAL SERVICE CORPORATIONS: An association may invest in the capital stock, obligations or other securities of a service corporation organized under the law of the state of New Mexico if:

A. the service corporation's entire capital stock is available for purchase by, and only by, any and all savings and loan associations with a home office in this state, and the capital stock is owned by more than one savings and loan association;

B. no savings and loan association owns, or may own, more than 10 percent of the service corporation's outstanding capital stock;

C. every eligible association may own an equal amount of such stock or may, on such uniform basis as the supervisor may determine, own an amount of such stock equaling a stated percentage of its assets or savings capital at the time it purchases any such stock; and

D. substantially all of the service corporation's activities, performed directly or through one or more wholly owned subsidiaries or joint ventures, consist of one or more of the following:

- (1) originating, purchasing, selling and servicing any of the following:
 - (a) loans, and participation in loans, on a prudent basis and secured by real estate or first liens on mobile homes, including brokerage and warehousing of such loans;
 - (b) loans, with or without security, for altering, repairing, improving, equipping or furnishing residential real estate;
 - (c) educational loans; and
 - (d) consumer loans;
- (2) making any of the following kinds of investments:
 - (a) investments specified in Section 58-10-45 NMSA 1978;
 - (b) investments in savings accounts in an association which is a stockholder in the service corporation, if the service corporation receives no consideration, other than interest at the current market rate, for opening or maintaining any such account;
- (3) performing the following services, primarily for savings and loan associations:
 - (a) clerical services, accounting, data processing and internal auditing;
 - (b) credit information, appraising, construction loan inspection and abstracting;
 - (c) developing and administration of personnel benefit programs, including life insurance, health insurance and pension or retirement plans;
 - (d) research, studies and surveys;
 - (e) purchasing office supplies, furniture and equipment;
 - (f) developing and operating storage facilities for microfilm or other duplicate records;
 - (g) advertising and other services to procure and retain both savings accounts and loans;
- (4) acquiring unimproved real estate for prompt development and subdivision, principally for construction of housing or for resale to others for such construction, or for use as mobile home sites. However, if the total cost to the service corporation to purchase, develop, subdivide and construct improvements on such real estate exceeds 20 percent of its asset, it shall notify the supervisor within 30 days after such acquisition. Notification shall include the number of lots or acres involved and the project's name, location, estimated completion date and total projected cost including dollar involvement of the service corporation.
 - (5) developing, subdividing and constructing improvements (including improvements to be used for commercial purposes, when incidental to a housing project) for sale or for rental on real estate referred to in Paragraph 8.4.4 [now Paragraph (4) of Subsection D of 12.20.48.8 NMAC]. However, such development, subdivision and construction of improvements must be completed within three years after commencement of development of such real estate and within five years after acquisition of the real estate, unless such period is subsequently extended by the supervisor upon written application by the service corporation. Acquisition of an option to purchase is not an acquisition for the purpose of determining such period;
 - (6) acquiring improved residential real estate and mobile homes to be held for rental;
 - (7) acquiring improved residential real estate for remodeling, renovating or demolishing and rebuilding for sale or for rental;
 - (8) maintaining and managing rental real estate referred to in paragraphs 8.4.5, 8.4.6, and 8.4.7 [now Paragraphs (5), (6) and (7) of Subsection D of 12.20.48.8 NMAC] and any real estate owned by holders of its capital stock;
 - (9) serving as insurance broker or agent, in accordance with applicable laws, primarily dealing in policies for savings and loan associations, their borrowers and account holders, which provide protection such as homeowner's, fire, theft, automobile, life, health, accident and title but excluding private mortgage insurance;
 - (10) serving as escrow agent or as trustee under deeds of trust;

(11) preparing state and federal tax returns for account holders of or borrowers from a stockholder of the service corporation (including their family members but not including an account-holder or borrower which is a corporation operated for profit);

(12) acquiring, maintaining and managing real estate (improved or unimproved) to be used for offices and related facilities of a stockholder of the service corporation, or for such offices and related facilities and for rental or sale, if such acquisition, maintenance and management is performed under a prudent program of property acquisition to meet either the stockholder's present needs or reasonable future needs for office and related facilities. However, without prior approval of the director, no service corporation shall acquire such real estate if, as a result of the acquisition, the outstanding aggregate book value of all such real estate owned by the stockholder and its service corporations would exceed its consolidated net worth;

(13) issuing credit cards, extending credit in connection therewith, and otherwise engaging in or participating in credit card operations;

(14) activities reasonably incident to those listed in paragraphs 8.4.1 through 8.4.12 [now Paragraphs (1) through (12) of Subsection D of 12.20.48.8 NMAC]; and

(15) such other activities reasonably related to the activities of associations as the supervisor may approve.

[11/17/80; 9/15/97; Recompiled 10/15/01]

12.20.48.9 OTHER SERVICE CORPORATIONS: In addition to investment in service corporations under Section 8 of this Sub-part [now 12.20.48.8 NMAC], an association may invest in the capital stock or other securities of a service corporation organized under the laws of this state if:

A. the corporation's entire capital stock is held by one or more savings and loan associations with a home office in this state;

B. the activities of such corporation, performed directly or through one or more wholly owned subsidiaries or joint ventures, consist solely of one or more of the activities specified in paragraphs 8.4.1 through 8.4.13 of this Sub-part [now Paragraphs (1) through (13) of Subsection D of Section 12.20.48.8 NMAC] and such other activities reasonably related to the activities of an association as the supervisor may approve;

C. In the case of a corporation in which fewer than five savings and loan associations hold capital stock or one association holds more than 40 percent of such stock, the following requirements are met:

(1) the corporation, including any subsidiary, does not have outstanding at any time consolidated debt (to holders of its capital stock and to others) exceeding the following limitations:

(a) unsecured debt - two times the total of its consolidated net worth plus unsecured debt to holders of at least 25 percent of its capital stock;

(b) secured and unsecured debt - ten times the total of its consolidated net worth plus unsecured debt to such stockholders; or if the corporation, including any subsidiary thereof, is engaged solely in activities specified in paragraph 8.4.1.1 of this regulation [now Subparagraph (a) of Paragraph (1) of Subsection D of Section 12.20.48.8 NMAC], 20 times such total;

(c) secured debt will be deemed unsecured for purposes of Subsection 9.3.1 [now Paragraph (1) of Subsection C of 12.20.48.9 NMAC] to the extent that it exceeds the market value of any security therefor at the time the loan is made. The term secured debt as used in Subsection 9.3.1 [now Paragraph (1) of Subsection C of 12.20.48.9 NMAC] shall include the entire amount of any obligation of the service corporation resulting from sale of consumer loans with recourse;

(d) the debt of each subsidiary of the corporation shall also conform to the debt limitations in the subsection;

(2) supervisor approval is obtained before any activity of the service corporation is performed through one or more joint ventures if a director, officer or controlling person of any stockholder of the service corporation has direct or indirect beneficial interest in the joint venture;

(3) supervisor approval is obtained for any investment:

(a) by an association in such a service corporation or in a corporation which will become such a service corporation as a result of such investment; and

(b) by such service corporation directly or indirectly through one or more of its wholly-owned subsidiaries or joint ventures if the purpose of such investment is to acquire a going business for an amount exceeding the fair market value of the tangible net assets of that business from a director or officer of an association which owns any of the capital stock of the service corporation or from an entity in which a director or officer of the association has a direct or indirect beneficial interest or is a director, officer, controlling person, partner or trustee.

12.20.48.10 AMOUNT OF INVESTMENT:

A. An association may invest in the capital stock, obligations or other securities of service corporations, provided that its aggregate outstanding investment does not exceed three percent of assets, and any investment in excess of two percent of assets serves primarily community, inner-city or community development purposes. The investment limitations of this subsection shall include all loans secured and unsecured, and all guarantees or takeout commitments of such loans, to service corporations or any subsidiaries thereof, and to joint ventures of such service corporations or subsidiaries, whether or not the association is a stockholder therein. An association with an aggregate outstanding investment in excess of two percent of assets shall designate investments that serve primarily community, inner-city or community development purposes, which shall include the following:

- (1) investments in governmentally insured, guaranteed, subsidized or otherwise sponsored programs for housing, small farms or businesses that are local in character;
- (2) investments for the preservation or revitalization of either urban or rural communities;
- (3) investments designed to meet the community development needs of, and primarily benefit, low- and moderate-income communities; or
- (4) other community, inner-city or community development related investments approved by the supervisor.

B. In addition to amounts which it may invest under Subsection 10.1 [now Subsection A of 12.20.48.10 NMAC], an association which has a net worth of at least five percent of withdrawable accounts and which has a ratio of scheduled items (other than assets acquired in a merger instituted for supervisory reasons) to specified assets of not more than 2.5 percent (except as provided in Subsection 10.4) [now Subsection D of 12.20.48.10 NMAC] may loan additional amounts as follows:

- (1) an aggregate outstanding amount not to exceed 20 percent of the association's net worth may be invested in conforming loans made to service corporations, or subsidiaries thereof, and to joint ventures, of such service corporations and subsidiaries; and

- (2) an aggregate outstanding amount, including loans included in paragraph 10.2.1 [now Paragraph (1) of of Subsection B of 12.20.48.10 NMAC], not to exceed 50 percent of such association's net worth may be invested in conforming loans made to a service corporation of which the association owns or holds with power to vote not more than ten percent of the capital stock or to a joint venture in which service corporations in which the association is a stockholder, including subsidiaries of such service corporations:

- (a) own or hold with power to vote not more than a total of ten percent of the capital stock, or
- (b) are limited partners and have contributed not more than ten percent of such joint venture's capital.

C. The limitation in Subsection 10.1 [now Subsection A of 12.20.48.10 NMAC] does not apply to conforming loans to a service corporation which qualifies under Section 10 of this Sub-part [now 12.20.48.10 NMAC] or to any service corporation in which the lending association does not have any investment made under authority of this subpart [now part].

D. An association whose net worth equals at least five percent of withdrawable accounts may apply to the supervisor for an exception from the scheduled items limitation in Subsection 10.2 of this Sub-part [now Subsection B of 12.20.48.10 NMAC]. The application shall be supported by information evidencing the association's sound investment, lending, appraisal and underwriting policies and favorable operating results. The application shall be filed with the supervisor. The application is approved, if, within 30 calendar days after the date the supervisor receives it, he has not notified the applicant that approval is withheld.

E. Examination: An association may invest in the capital stock, obligations or other securities of a service corporation only if the service corporation has executed and filed with the supervisor a written agreement that the service corporation will permit and pay the cost of examination of it by the supervisor to determine the propriety of any investment by an association under this Sub-part [now part].

F. Disposal of investment: Whenever a service corporation, including any subsidiary thereof, engages in an activity which is not permissible for or exceeds limitations on a service corporation in which an association may invest, or whenever the capital stock ownership requirements of this Sub-part [now part] are not met, an association having an interest in the corporation, including any subsidiary thereof, shall dispose of its investments promptly unless, within 90 days after the supervisor mails written notice to the association, the impermissible activity is discontinued, the limitation is complied with or the capital stock ownership requirements are met.

G. Corporate name: No association may invest in, or retain any investment in, the capital stock, obligations or other securities of any service corporation whose corporate name for the designation of whose subsidiary or office:

- (1) includes the words "National", "Federal" or "United States" or the initials "U.S."; or
- (2) could identify it with any entity which has not invested in it.

H. Any application made to the supervisor under this Sub-part [now part] shall be in the form he prescribes. One or more associations which propose investment in a service corporation which is not yet organized may make any application required by the Sub-part [now part].

I. Activities and limitations specified in this Sub-part [now part] may be revised from time to time.

J. Service corporations in which associations may invest shall not be used to acquire scheduled items except that such a service corporation may, for the purpose of providing housing, acquire real estate owned by an association domiciled in this state.

[11/17/80; 9/15/97; Recompiled 10/15/01]

HISTORY OF 12.20.48 NMAC:

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

FID 80-14, Regulation 80-4 S&LB, Service Corporation, filed 12/5/80.

History of Repealed Material: [RESERVED]