

TITLE 2 PUBLIC FINANCE
CHAPTER 60 INVESTMENT AND DEPOSITS OF PUBLIC FUNDS
PART 4 DEPOSITORY BANK REQUIREMENTS, COLLATERAL LEVEL REQUIREMENTS,
AND CUSTODIAL BANK REQUIREMENTS

2.60.4.1 ISSUING AGENCY: State Board of Finance, 181 Bataan Memorial Building, Santa Fe, NM 87501.

[4-30-97; 2.60.4.1 NMAC - Rn, 2 NMAC 60.4.1, 11-15-2001; A, 12-1-2009]

2.60.4.2 SCOPE: State treasurer and financial institutions holding deposits of public money or collateral pledged to secure those deposits under the state board of finance authority.

[4-30-97; 2.60.4.2 NMAC - Rn, 2 NMAC 60.4.2, 11-15-2001; A, 2-1-2007]

2.60.4.3 STATUTORY AUTHORITY:

A. Section 6-1-1 Part E NMSA 1978 states that the state board of finance has general supervision of the fiscal affairs of the state and of the safekeeping and depositing of all money and securities belonging to or in custody of the state.

B. Section 6-10-10 Part C NMSA 1978 provides that the state treasurer may deposit money in one or more accounts with any bank, savings and loan association, or credit union whose deposits are insured by an agency of the United States to receive public money or deposits.

C. Sections 6-10-16 and 6-10-16.1 NMSA 1978 provide for the type of securities of the United States and the state of New Mexico, including surety bonds as provided in Section 6-10-15, to be used as collateral for deposits of public funds.

D. Section 6-10-17 NMSA 1978 provides that any financial institution designated as a depository of public money shall deliver securities having an aggregate value of at least one-half the amount of public money to be deposited to a custodial bank and shall deliver a joint safekeeping receipt issued by the custodial bank to the public official from whom the public money is received for deposit.

E. Section 6-10-17.1 NMSA 1978 provides that when a depository bank has not maintained qualifying securities as collateral for deposits of public money, the state treasurer or board shall request the depository bank to provide additional qualifying securities to meet those requirements within ten (10) calendar days. If the depository bank does not comply, the board or state treasurer shall withdraw all deposits of public money within the next ten (10) calendar days without penalty to the public depositor.

F. Section 6-10-18 NMSA 1978, requires any financial institution designated as a depository of public money to enter into a written agreement to assure that collateral it pledges as security remains secure throughout the term of the designation.

G. Section 6-10-20 NMSA 1978 provides that the board may at any time within its discretion require any depository financial institution to furnish additional security for deposit of the kind specified in Section 6-10-16 NMSA 1978.

H. Section 6-10-21 NMSA 1978, authorizes and directs the board to regulate the safekeeping of securities pledged as collateral by depository banks and requires the board to designate the third-party custodial banks charged with safekeeping that collateral pursuant to contracts between the two financial institutions and the state.

I. Section 6-10-24.1 NMSA 1978, bars the state treasurer from depositing public money in a financial institution in an amount that exceeds 400 percent of the total equity capital in the case of banks or 400 percent of the net worth in case of savings and loan associations, or 25 percent of the total of the financial institution's deposits, whichever is less.

[4-30-97; 2.60.4.3 NMAC - Rn & A, 2 NMAC 60.4.3, 11-15-2001; A, 8-1-2006; A, 2-1-2007; A, 12-1-2009]

2.60.4.4 DURATION: Permanent.

[4-30-97; 2.60.4.4 NMAC - Rn, 2 NMAC 60.4.4, 11-15-2001]

2.60.4.5 EFFECTIVE DATE: April 30, 1998, unless a later date is cited at the end of a section.

[4-30-97, 4-30-98; 2.60.4.5 NMAC - Rn & A, 2 NMAC 60.4.5, 11-15-2001]

2.60.4.6 OBJECTIVE: This rule provides general guidance regarding the financial and legal requirements to be followed by the state treasurer to minimize risks to existing and future deposits of public money under the authority of the board.
[4-30-97; 2.60.4.6 NMAC - Rn & A, 2 NMAC 60.4.6, 11-15-2001; A, 12-1-2009]

2.60.4.7 DEFINITIONS:

- A. "Board" means state board of finance.
- B. "Custodial bank" means a federal reserve bank or branch thereof or any bank designated by the board as described in this rule.
- C. "Deposit" means the amount of state funds held by the financial institution in an account owned by the state, or any funds deposited (including CD deposits) by the state with that financial institution. For purposes of computing the deposit ratio or the amount of collateral to be posted, the amount insured by the federal deposit insurance company, the federal savings and loan insurance corporation or the national credit union administration shall not be included.
- D. "Deposit ratio" means the amount of state funds on deposit or invested with a financial institution divided by the total amount of deposits at the financial institution, excluding, however, funds held by the fiscal agent bank, as the state's fiscal agent bank, and demand deposits held by state checking depository banks when determining the amount of state funds.
- E. "Depository bank" means a financial institution certified or designated by the state treasurer to hold deposits of public money.
- F. "Equity ratio" means the amount of state funds on deposit or invested with a financial institution divided by the total equity capital of the financial institution, excluding, however, funds held by the fiscal agent bank, as the state's fiscal agent bank, and demand deposits held by state checking depository banks when determining the amount of state funds.
- G. "FDIC" means federal deposit insurance corporation.
- H. "Financial institution" means any bank, savings and loan association or credit union whose deposits are insured by an agency of the United States.
- I. "Letters of credit" means those letters of credit that are eligible to be pledged to the state to secure state funds pursuant to Section 6-10-16, NMSA 1978, as it may be amended from time to time.
- J. "Non-performing loans" means loans that are at least 90 days past due and accruing or non-accruing.
- K. "Securities" means those securities eligible as collateral for public funds under Section 6-10-16 NMSA 1978.
- L. "Surety bond" means a bond substantially in the form prescribed in 6-10-15 NMSA 1978, issued by a surety company that is continually rated in the highest category by at least one nationally recognized statistical rating agency and licensed to do business in New Mexico.
[2.60.4.7 NMAC - N, 11-15-2001; A, 2-1-2007; A, 12-1-2009]

2.60.4.8 DESIGNATION AS A DEPOSITORY

BANK:

- A. A financial institution requesting to become a depository bank must submit the following information to the state treasurer:
 - (1) a letter from the financial institution requesting to become a depository bank;
 - (2) copy of FDIC certification or the national credit union administration certification;
 - (3) financial reports for the preceding four quarters; a newly chartered financial institution must provide its most recent financial report; and
 - (4) other public information requested by the state treasurer.
- B. Initial and continued appointment of financial institutions to serve as depository banks for the state of New Mexico is determined by the financial institution's risk assessment ratios and required collateral levels as specified in 2.60.4.9 below, and entry into and maintenance of a depository agreement consistent with Section 6-10-18 NMSA 1978.
[4-30-97, 4-30-98; 2.60.4.8 NMAC - Rn & A, 2NMAC 60.4.8, 11-15-2001; A, 8-1-2006; A, 2-1-2007; A, 12-1-2009]

2.60.4.9 COLLATERAL REQUIREMENTS FOR DEPOSITORY BANK SERVICES AND RISK ASSESSMENT RATIOS:

A. The board directs the state treasurer to conduct risk assessment analysis of depository banks holding deposits of public money under the board's authority. The risk assessment will include a determination of each depository bank's primary capital-to-asset ratio, net operating income to total average asset ratio and non-performing loans to primary capital ratio for the past four (4) consecutive quarters. These risk assessment ratios will determine collateral level requirements for financial institutions holding deposits of public money as listed below.

- (1) If a depository bank's primary capital-to-asset ratio [c] as defined by the FDIC is:
 - (a) 6.1 percent or greater, the depository bank shall be required to maintain collateral with an aggregate market value equal to 50 percent of the amount of the deposit;
 - (b) 5.0 percent to 6.0 percent, the depository bank shall be required to maintain collateral with an aggregate market value equal to 75 percent of the amount of the deposit;
 - (c) less than 5.0 percent, the depository bank shall be required to maintain collateral with an aggregate market value equal to 102 percent of the amount of the deposit.
- (2) If the ratio of a depository bank's net operating income after taxes to its total average assets is:
 - (a) .61 percent or greater, the depository bank shall be required to maintain collateral with an aggregate market value equal to 50 percent of the amount of the deposit;
 - (b) .51 percent to .60 percent, the depository bank shall be required to maintain collateral with an aggregate market value equal to 75 percent of the amount of the deposit;
 - (c) less than .51 percent, the depository bank shall be required to maintain collateral with an aggregate market value equal to 102 percent of the amount of the deposit;
 - (d) a newly chartered depository bank is exempt from this ratio requirement for its first year of its operation; for its second year of operations, the depository bank shall annualize its net operating income beginning with the first quarter of the second year; if this ratio is less than .61 percent, the state treasurer shall review the depository bank's financial condition and may request additional collateral.
- (3) If the depository bank's non-performing loans to primary capital ratio is:
 - (a) 34.9 percent or less, the depository bank shall be required to maintain collateral with an aggregate market value equal to 50 percent of the amount of the deposit;
 - (b) 35.0 percent to 49.9 percent, the depository bank shall be required to maintain collateral with an aggregate market value equal to 75 percent of the amount of the deposit;
 - (c) greater than 49.9 percent, the depository bank shall be required to maintain collateral with an aggregate market value equal to 102 percent of the amount of the deposit.
- (4) If a depository bank's deposit ratio is:
 - (a) less than 10 percent, the depository bank shall be required to maintain collateral with an aggregate market value equal to 50 percent of the amount of the deposit;
 - (b) 10 percent or greater, the depository bank shall be required to maintain collateral with an aggregate market value equal to 102 percent of the amount of the deposit.
- (5) If a depository bank's equity ratio is:
 - (a) less than 200 percent, the depository bank shall be required to maintain collateral with an aggregate market value equal to 50 percent of the amount of the deposit;
 - (b) 200 percent or greater, the depository bank shall be required to maintain collateral with an aggregate market value equal to 102 percent of the amount of the deposit.

B. Should the risk assessment ratios established in this section result in different levels of collateral for a depository bank, the state treasurer shall request the highest collateral level required by any ratio.

C. Collateral levels shall be required until the risk assessment ratios of the depository bank return to a level which allows collateral to be kept at a lower level or at statutory minimum level as appropriate.

D. State funds shall not be deposited or invested in a depository bank in an amount that, when added to state funds already on deposit in that depository bank, exceeds 200 percent of the total equity capital in case of banks or 200 percent of the net worth in the case of savings and loan associations or 10 percent of the total of the bank's or the saving and loan association's deposits, whichever is less, unless and until the bank or savings and loan association has pledged and maintains collateral with an aggregate market value equal to 102 percent of the aggregate amount on deposit. **In no event** shall state funds be deposited or invested in any amount that, when added to state funds already on deposit and invested in that depository bank, exceeds 400 percent of the total equity capital in case of banks or 400 percent of the depository bank's net worth in case of savings and loan associations or 25 percent of the total of the bank's or the savings and loan association's deposits, whichever is less, provided, however, the 25 percent of total deposits limitation shall not apply during the first year of operation of a newly chartered bank or savings and loan association. In the event state funds in a bank or savings and loan association exceed the 400 percent/25 percent limitations set out herein, the state treasurer shall not renew any maturing

certificates of deposit and shall provide for the staged withdrawal of the amount in excess of these limitations over a reasonable period of time to avoid causing failure of the depository bank unless immediate withdrawal is necessary to prevent loss of funds pursuant to 2.60.4.12 NMAC. Further, the state treasurer shall not deposit state funds in credit unions in excess of the amount insured by an agency of the United States. The amount of state funds deposited and invested as described above shall exclude funds held by the state's fiscal agent bank, as the fiscal agent bank, and demand deposits held by state checking depository banks.

[4-30-97, 4-30-98; 2.60.4.9 NMAC - Rn & A, 2 NMAC 60.4.8, 11-15-2001; A, 8-1-2006; A, 2-1-2007; A, 12-1-2009]

2.60.4.10 REQUIRED TYPES OF COLLATERAL:

- A. Deposits of public money shall be secured by the following.
- (1) Securities of the United States, its agencies or instrumentalities which shall be accepted at market value.
 - (2) Securities of the state of New Mexico, its agencies, instrumentalities, counties, municipalities or other subdivisions, which shall be accepted at par value.
 - (3) Securities, including student loans, guaranteed by the United States or the state of New Mexico which shall be accepted at market value.
 - (4) Revenue bonds that are underwritten by a member of the national association of securities dealers, known as "N.A.S.D.", and are rated "BAA" or above by a nationally recognized bond rating service, which shall be accepted as security at market value.
 - (5) Bonds of the New Mexico mortgage finance authority, a state instrumentality.
 - (6) Farmers' home administration loans, which are fully guaranteed by the federal government.
 - (7) Letters of credit issued by a federal home loan bank in the same amount that would be required if securities were being posted as collateral pursuant to Subsection A of 2.60.4.9 NMAC ,which shall be accepted at par value.
 - (8) Surety bonds in the same amount that would be required if securities were being posted as collateral pursuant to Subsection A of 2.60.4.9 NMAC, which shall be accepted at par value. Additionally, each surety bond must receive prior approval from the board and a district judge of the first judicial district.

B. Mutual funds may not be pledged as collateral for deposits of public funds.

[2.60.4.10 NMAC - N, 11-15-2001; A, 2-1-2007; A, 12-1-2009]

2.60.4.11 DEPOSITORY BANK REPORTING TO THE STATE TREASURER:

A. The figures to be used by the state treasurer in completing the risk assessment analysis for a depository bank shall be calculated from the quarterly call statements, thrift reports, or national credit union administration reports of the financial institution and on the state treasurer's generated report "New Mexico financial institution quarterly report". Both reports shall be furnished by the financial institution to the state treasurer no later than on the tenth day of the second month following the end of each calendar quarter. If the tenth day falls on a weekend or a legal holiday, the figures shall be submitted on the next business day.

B. By the tenth day, a depository bank shall submit a monthly collateral (including surety bonds and letters of credit) level report to the state treasurer on the state treasurer's generated form "state treasurer collateral compliance monthly report". If the tenth falls on a weekend or a legal holiday, the figures shall be submitted on the next business day.

C. The reports provided to the state treasurer by the depository bank shall be certified in writing by the president, an executive officer, or a person authorized by a corporate resolution certifying the information of the financial institution.

D. The state treasurer may, at any time between quarterly reporting periods, request any additional certified public information from the depository bank as needed to assess its risk level.

E. The state treasurer is directed to require each depository bank to provide a copy of any regulatory enforcement decisions or orders issued by a state or federal regulatory agency having authority to issue such enforcement decisions or orders that have a material impact on the depository bank or on financial ratios required of it by its respective regulatory agencies or this rule to the state treasurer within ten (10) business days of any such document becoming public.

[2.60.4.11 NMAC - N, 11-15-2001; A, 8-1-2006; A, 2-1-2007; A, 12-1-2009]

2.60.4.12 COLLATERAL LEVEL NON-COMPLIANCE AND APPROPRIATE ADJUSTMENTS:

A. If a depository bank is unable to meet the risk assessment qualifications for a minimum level of collateral required, the state treasurer is directed to cease making any additional deposits of public money into the depository bank and to withdraw deposits in the order they would otherwise mature to an amount which can be collateralized at an appropriate level of collateral in accordance with the risk assessment ratios.

B. If a depository bank has not maintained qualifying securities as collateral, the state treasurer shall request the depository bank to substitute or provide additional qualifying securities to meet collateral requirements within ten (10) calendar days. If the depository bank does not comply with the request within ten (10) calendar days, the state treasurer shall withdraw from that depository bank within the next ten (10) calendar days all deposits of public money under the state treasurer's control without penalty.

C. Upon receipt of notice by a depository bank of an adverse event or final administrative enforcement action imposed upon it.

(1) If the state treasurer believes such action indicates a high level of risk in maintaining public deposits in that depository bank, the state treasurer shall report to the board and the board shall decide whether additional collateral shall be required.

(2) The state treasurer may require the pledging of additional collateral or make an emergency withdrawal of state deposits prior to maturity and prior to obtaining board direction when such action is necessary in the state treasurer's judgment in the exercise of reasonable care to protect state funds.

(3) If the depository bank believes that exceptional circumstances exist which indicate that it is or was not appropriate for the state treasurer to take any action pursuant to this subsection:

(a) the depository bank shall appear at the next regularly scheduled board meeting and present its position;

(b) the board shall determine what action should be taken or if deposits should be reinstated.

(4) If a surety company that has issued the surety bond ceases to be rated in the highest rating category by at least one nationally recognized statistical rating agency, the surety bond issued by the company shall no longer be valid for use as collateral for state deposits and alternative collateral must be pledged immediately.

D. The withdrawal of state deposits from a depository bank 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 depository bank.

E. Nothing herein shall restrict the state treasurer or the board from the lawful exercise of rights and duties conferred upon them by law.

[2.60.4.12 NMAC - N, 11-15-2001; A, 8-1-2006; A, 2-1-2007; A, 12-1-2009]

2.60.4.13 REQUIREMENTS TO PROVIDE CUSTODIAL BANK SERVICES:

A. A financial institution requesting to become a custodial bank must submit the following information to the state treasurer:

(1) a letter from the federal reserve bank or branch thereof or any bank qualified to perform custodial functions in the state of New Mexico requesting to become a custodial bank;

(2) copy of FDIC certification;

(3) financial reports for the preceding four quarters; newly chartered financial institutions must provide their most recent financial report;

(4) for banks that are not federal reserve banks or branches thereof, information and documentation demonstrating their qualifications to perform custodial functions in the state; and

(5) other public information requested by the state treasurer.

B. Initial and continued appointment for a financial institution to serve as a custodial bank for the state of New Mexico is determined by the risk assessment ratios of the financial institution. A qualified financial institution requesting initial and continued appointment as a custodial bank must certify that the financial institution has continuously maintained a primary capital-to-asset ratio of greater than 6.0 percent, a net operating income-to-total average asset ratio of .61 percent or higher, and non-performing loans-to-primary capital ratio of 34.9 percent or lower for the preceding four quarters. A newly chartered financial institution, at the time of appointment, must certify that it has maintained a primary capital-to-asset ratio of greater than 6.0 percent, a net operating income-to-total average asset ratio of .61 percent or higher, and non-performing loans-to-primary capital ratio of 34.9 percent or lower for the current quarter.

C. No custodial bank shall be a member of the same holding company as the financial institution whose securities the custodial bank is holding as the state's agent. In addition, any financial institution that owns 5 percent or more of another financial institution may not hold collateral for that financial institution.

D. If the state treasurer seeks and cannot find an adequate number of financial institutions that meet all of the requirements in Subsection B of 2.60.4.13 NMAC to act as custodial banks, the state treasurer may, with the approval of the state treasurer's investment committee, lower any one of, but only one of, the requirements to qualify as a custodial bank to: a primary capital-to-asset ratio of greater than 5.0 percent, a net operating income-to-total average asset ratio of .51 percent or higher, or non-performing loans-to-primary capital ratio of 49.9 percent or lower. The lower requirements would only be honored for a period not to exceed one quarter, and such exception can be revoked at anytime by the state treasurer, at the state treasurer's discretion. After this period, the custodial bank would have to meet the regular requirements set out in 2.60.4.13 NMAC to remain a custodial bank or will become disqualified as a custodial bank.
[2.60.4.13 NMAC - N, 11-15-2001; A, 2-1-2007; A, 12-1-2009]

2.60.4.14 CUSTODIAL BANK REPORTING TO THE STATE TREASURER:

A. The figures to be used by the state treasurer in completing the risk assessment analysis for a custodial bank shall be calculated from the quarterly call statements of the custodial bank and from the treasurer's generated report "New Mexico financial institution quarterly report". Both reports shall be furnished by the custodial bank to the state treasurer no later than on the tenth day of the second month following the end of the calendar quarter. If the tenth day falls on a weekend or a legal holiday, the figures shall be submitted on the next business day.

B. A custodial bank shall report monthly to the state treasurer the collateral amounts held for each depository bank for which it holds collateral.

C. The figures provided to the state treasurer by the custodial bank shall be certified in writing by the president, an executive officer, or a person authorized by a corporate resolution certifying the information of the custodial bank.

D. The state treasurer is directed to require each custodial bank to provide a copy of any regulatory enforcement decisions or orders issued by a state or federal regulatory agency having authority to issue such enforcement decisions or orders that have a material impact on the custodial bank or on financial ratios required of it by its respective regulatory agencies or this rule to the state treasurer within ten (10) business days of any such document becoming public.

E. The state treasurer may, at any time between quarterly reporting periods, request any additional public certified information from a custodial bank as needed to assess its risk level.[2.60.4.14 NMAC - N, 11-15-2001; A, 2-1-2007; A, 12-1-2009]

2.60.4.15 CUSTODIAL BANK NON-COMPLIANCE:

A. Unless a waiver is granted by the state treasurer pursuant to Subsection D of 2.60.4.13.NMAC, a financial institution will be disqualified from serving as custodial bank for state deposits when any one of the following three conditions occur:

- (1) any one of the following risk assessment ratio conditions occur for three consecutive quarters:
 - (a) primary capital-to-asset ratio falls below 6.1 percent;
 - (b) net operating income-to-total average asset ratio falls below .61 percent; or
 - (c) the non-performing loans-to-primary capital ratio rises above 34.9 percent;
- (2) any two of the following risk assessment ratio conditions occur for two consecutive quarters:
 - (a) primary capital-to-asset ratio falls below 6.1 percent;
 - (b) net operating income-to-total average assets ratio falls below .61 percent; or
 - (c) the non-performing loan-to-primary capital ratio rises above 34.9 percent; or
- (3) any one of the following risk assessment ratio conditions occur for more than one quarter:
 - (a) primary capital-to-asset ratio falls below 5.0 percent;
 - (b) net operating income-to-total average asset ratio falls below .51 percent; or
 - (c) the non-performing loans-to-primary capital ratio rises above 49.9 percent.

B. The state treasurer shall notify the custodial bank in writing of revocation of its designation as custodial bank stating the reason for revocation. The financial institution shall notify depository banks of termination of the custodial agreement within three (3) business days and shall cooperate in the expeditious and orderly transfer of collateral.

[2.60.4.15 NMAC - N, 11-15-2001; A, 12-1-2009]

HISTORY OF 2.60.4 NMAC:

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

Directive 86-6, State Board of Finance Collateral Policy-Savings and Loans, filed 9-17-86,

Directive 86-7, State Board of Finance Collateral Policy-Banks, filed 9-17-86.

History of Repealed Material: [RESERVED]