

Chapter 389-12 WAC

Practice and procedure — public depositaries

(Effective August 23, 2009)

WAC Sections

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389-12-010

Promulgation.

The public deposit protection commission, hereinafter referred to as the "commission," after due and proper notice, and pursuant to the provisions of chapter 193, Laws of 1969 1st ex. sess., as last amended by chapter 9, Laws of 2009, hereinafter referred to as the "act," hereby adopts and promulgates the following rules and regulations.

389-12-020

Definitions.

Unless the context requires otherwise:

(1) "Uninsured public deposits" means public deposits not backed by the full faith and credit of the United States government.

(2) "Depositor" means a state or local government with public funds on deposit with a public depository as defined in chapter 39.58 RCW.

(3) "Investment deposits" means time deposits, savings deposits, and money market deposit accounts of public funds available for investment as defined in Regulation D, Title 12 Code of Federal Regulations (CFR) Part 204. "Investment deposits" also means certificates of deposit issued in accordance with the following conditions:

(a) The funds are initially invested in an authorized Washington state public depository;

(b) The public depository arranges for the investment of the funds in certificates of deposit issued by one or more federally insured banks or savings and loan associations wherever located, for the depositor;

(c) The full amount of the deposit, principal and interest, of each such certificate of deposit is insured by an agency of the federal government;

(d) The public depository acts as custodian for the depositor with respect to all such certificates of deposit issued for the depositor; and

(e) At the same time that funds are invested and the corresponding certificates of deposit are issued, the public depository receives an amount on deposit from other federally regulated financial institutions wherever located equal to or greater than the amount of funds initially invested by the depositor.

All such investment deposits invested in accordance with conditions (a) through (e) of this subsection shall not be subject to any additional security or collateral requirement.

(4) "Commission report" means a formal accounting rendered by all public depositories to the commission, which details pertinent information of each depository in a format supplied by the commission.

(5) "Commission report date" means the last day of each calendar quarter.

(6) "Commission report due date" means the commission report is due in the office of the commission no later than the date a depository's financial report is due to its federal regulatory authority.

(7) "Monthly report" means a report prepared by all public depositories to the commission, which details insured and uninsured public funds and other pertinent information of each depository in a format supplied by the commission.

(8) "Monthly report date" means the last day of each calendar month.

(9) "Monthly report due date" means the monthly report is due in the office of the commission no later than eight working days after the monthly report date or other date as set by the commission.

(10) "Financial report" means the consolidated statement of condition and income required by the Federal Financial Institution Examination Council or the thrift financial report required by the Office of Thrift Supervision.

(11) "Date of loss" means the date on which a loss shall be deemed to have occurred within the meaning of the act, and shall be the first to happen of the following:

- (a) The date of the taking of possession of the financial institution by a supervisory agency; or
- (b) The date of the appointment of the receiver or conservator for a financial institution; or
- (c) The date of the commencement of a voluntary liquidation proceeding for a financial institution; or
- (d) The date of an order issued by a regulatory authority or a court of competent jurisdiction restraining a financial institution from making payments on deposit liabilities; or
- (e) The date on which the commission declares that a financial institution no longer has the ability to repay public deposits in full.

(12) "Depository pledge agreement" means a written tripartite agreement, on a form supplied by the commission, wherein a financial institution, in compliance with the act and as a condition precedent to becoming or continuing to be a public depository, transfers and delivers securities which are eligible collateral to a corporate fiduciary under the exercise of its trust powers, to the federal reserve bank of San Francisco, the federal home loan bank of Seattle, or such other third-party safekeeping agent approved by the commission, which agrees to safekeep such securities for the primary benefit of the commission under the terms and conditions of the agreement and for the purposes set forth by the act and the regulations of the commission. Such agreement shall be executed on behalf of the commission by the chairman, who shall be the state treasurer. Upon completion, the agreement shall be approved by the board of directors or loan committee of the financial institution. The agreement must be continuously, from the time of its execution, an official record of the financial institution. Copies of the meeting minutes which reflect this are to be provided to the commission.

(13) "Segregation of collateral" means the transfer and delivery of eligible securities by a public depository pursuant to a depository pledge agreement. A public depository must submit a written request to the commission to reduce the amount of securities pledged as collateral. The trustee holding the collateral shall not allow a reduction of securities without the prior written approval of the commission. When a public depository pledges eligible securities whose payments include a periodic principal reduction, the trustee shall advise the commission, on no less than a monthly basis, of the amounts of such principal payments as well as the new total value which result from the principal payments.

(14) "Net worth" of a public depository means the same as defined in RCW 39.58.010.

Net worth for public depositories headquartered outside Washington state may be adjusted by the commission to reflect the depositories' proportional net worth position in Washington state.

(15) "Corporate fiduciary" for the purposes of these rules means a financial institution as defined herein which is possessed of statutorily granted trust authority: Provided, That for the purposes of this definition such financial institution need not be located or doing business in the state of Washington.

(16) "Out-of-state bank" for the purposes of these rules means a financial institution which has its principal place of business outside the state of Washington.

(17) "Alien bank" for the purposes of these rules means a financial institution organized under the laws of a foreign country and having its principal place of business in that country, the majority of the beneficial ownership and control of which is vested in citizens of countries other than the United States of America.

389-12-030**New public depositaries.**

Any financial institution in the state of Washington eligible under the act, in order to become a public depositary, must be approved by the commission and segregate collateral in the manner as set forth in these rules prior to the receipt of public deposits. Until such time as public depositaries have submitted four consecutive commission reports to the commission as required by RCW 39.58.100, they shall at all times be required to pledge and segregate eligible securities, valued at market value, in an amount equal to not less than 10% of uninsured public funds on deposit in said depositary, or such other sum or measure established by the commission by rule or noticed resolution.

389-12-035**Withdrawing public depositaries.**

No public depositary shall be released from its duties and liabilities until such financial institution has reported four accurate, consecutive commission reports indicating a zero balance of public funds on deposit. At such time, upon request by a public depositary, the commission shall terminate a financial institution's status as a public depositary.

389-12-040**Computation and report of maximum liability.**

On each commission report date each public depositary shall calculate its maximum liability in a format supplied by the commission. The commission report shall, in addition to other information required by the commission in its discretion, include the amount of insured and uninsured public deposits of Washington state and its political subdivisions for the most recent commission report date, the uninsured public deposits as shown on the four most recent commission reports (i.e., current report and three immediately preceding reports), the average of uninsured public deposits for the four most recent commission report dates, and the depositary's maximum liability as defined in chapter 39.58 RCW.

The commission report shall be received in the office of the commission by the commission report due date, and shall also include schedules, as determined by the commission, from the public depositary's most recent financial report to its federal regulatory authority. Any public depositary failing to submit its commission report by the commission report due date shall be subject to appropriate sanction as provided in chapter 39.58 RCW and WAC 389-12-100.

At the end of each calendar quarter, the commission shall provide each public depositary the amount constituting thirty percent of total public funds on deposit in Washington state for the preceding quarter. Depositaries shall use this amount to monitor their total public funds on deposit for the ensuing quarter, unless notified of a revised amount by the commission.

Upon written request from a public depositary the commission may, for good cause shown, extend the commission report due date for commission reports for a period not to exceed five days.

If the maximum liability has increased from the previous commission report or if aggregate public deposits exceed the limitations prescribed in RCW 39.58.135, the depositary shall immediately increase its collateral and the commission shall be so notified.

Each public depositary shall provide to the commission a copy of any changes, amendments, or alterations to the public depositary's financial report as submitted to its federal regulatory authority which relate to (a) deposits of states and political subdivision, and/or (b) net worth.

A monthly report of insured and uninsured public funds, and other pertinent information shall, in a format supplied by the commission, be submitted by each public depository to the commission no later than the monthly report date. If applicable, adjustments to the depositories' last reported net worth and/or additional collateral being pledged shall be listed on the monthly report. The monthly report shall be submitted to the commission every month. Any public depository failing to submit its monthly report by the monthly report due date shall be subject to appropriate sanction as provided in chapter 39.58 RCW and WAC 389-12-100.

389-12-045

Maximum liability established by resolution.

Pursuant to RCW 39.58.010, the commission may from time to time set by resolution such other sum or measure to determine the maximum liability of a public depository. In setting such other sum or measure, the commission shall consider factors including, but not limited to, the overall market conditions for financial institutions, the extent to which public deposit protections might be lessened, and the effects such change may have on other public depositories.

389-12-047

Computation of maximum liability — Transition.

The purpose of this section is to reconcile the computation of the maximum liability of a public depository in consideration of its definition prior to and subsequent to the enactment of chapter 9, Laws of 2009.

The maximum liability with reference to a public depository's liability under chapter 39.58 RCW shall be:

(1) A sum equal to ten percent of:

(a) All uninsured deposits held by a public depository that has not incurred a loss by the then most recent commission report date; or

(b) The average of the balances of total public deposits reported prior to enactment of chapter 9, Laws of 2009 and uninsured public deposits reported subsequently on the public depository's four most recent commission report dates, whichever amount is greater; or

(2) Such other sum or measure as the commission may set by resolution.

For example, the computation of a public depository's maximum liability on March 31, 2009, will be greater of the uninsured public funds held on March 31, 2009; or the average of uninsured public funds held on March 31, 2009, plus total public funds held on December 31, 2008, September 30, 2008, and June 30, 2008.

This section shall have no prospective application to a public depository that has not withdrawn its participation pursuant to WAC 389-12-035 once a public depository has four consecutive commission report dates subsequent to the effective date of chapter 9, Laws of 2009.

389-12-050

Valuation.

Securities pledged as collateral by a public depository shall be reported at par and market value.

Market value shall be computed as of the date of segregation or the last preceding commission report date, whichever is later. When the commission report is submitted, each depository shall provide, in a format supplied by the commission, a current listing of those securities pledged and their current par and market value as of the commission report date.

389-12-060**Deposit of collateral.**

Except for the exchange or substitution of securities having a like or greater market value, the trustee shall not permit the withdrawal of any security without advance written approval of the commission.

The trustee, under a depositary pledge agreement, shall inform the commission whenever assets are delivered to or by the trustee by mailing to the commission, within twenty-four hours following such deposit or withdrawal, a copy of the receipt signed by the party that accepted delivery of such assets.

No costs, fees and expenses incidental to the functioning of the pledge agreement shall be a charge against the commission or its interest in the securities pledged.

Each public depositary shall at all times maintain eligible collateral segregated and pledged with its trustee having a value at least equal to its maximum liability as defined in the act or such other sum or measure set by the commission and under these rules and regulations. Compliance with the foregoing requirement shall be the public depositary's responsibility regardless of the frequency and form of reports required by the commission.

389-12-065**Aggregate deposit limitations.**

Whenever the public funds on deposit in a public depositary exceed the limits set forth in RCW 39.58.135, such depositary shall immediately:

- (1) Notify the commission; and
- (2) Provide additional collateral, if necessary, to provide one hundred percent collateralization of such excess deposits.

When a depositary's net worth position is reduced, such depositary shall determine if any treasurer's or state treasurer's funds on deposit exceed the revised net worth. If any such excess deposits exist, the public depositary shall immediately notify the commission and provide the commission with a detailed accounting of deposits. The public depositary shall also advise the commission of its intent to:

- (1) Provide one hundred percent collateralization of the excess deposits; or
- (2) Allow the treasurer to withdraw such deposits in accordance with RCW 39.58.130.

389-12-071**Minimum standards for the financial condition of public depositaries.**

Notwithstanding any other provisions of chapter 39.58 RCW and chapter 389-12 WAC, a public depositary shall be classified into capital categories as provided under regulations implementing section 38 of the Federal Deposit Insurance Act (FDIA) issued by the federal regulatory authority for that public depositary. If a public depositary is categorized as undercapitalized for purposes of section 38 of the FDIA, the public depositary shall pledge securities as collateral, valued at current market value, in a total amount at least equal to one hundred percent of its uninsured public deposits, or take other actions as determined by the commission; however, the commission may, at any time, in its discretion, require a public depositary to pledge additional collateral after consultation with the appropriate regulatory authorities.

The collateral pledged under this section shall not be less than the maximum liability as required in RCW 39.58.050(1), but may include collateral required by RCW 39.58.130, 39.58.135, and WAC 389-12-065.

389-12-075**Collateral level to be maintained.**

Whenever a public depository must pledge securities as collateral in accordance with RCW 39.58.130, 39.58.135, WAC 389-12-065, and 389-12-071, the depository must monitor its uninsured public funds on deposit on a daily basis and maintain securities, valued at current market value, accordingly.

389-12-080**Maximum deposit limitation.**

In determining the maximum deposit limitation of any financial institution, a treasurer or state treasurer, unless advised to the contrary by the commission, may assume that each public depository's net worth has remained unchanged from that stated in the most recently rendered commission report.

389-12-090**Additional reports, inspections, audits.**

The commission may from time to time require such additional reports as will facilitate the performance of its functions. All public depositories are required to submit to such inspections and/or audits of their public deposits and/or eligible collateral as the commission may from time to time require. Any public depository failing to respond timely to a request from the commission shall be subject to appropriate sanction as provided in chapter 39.58 RCW and WAC 389-12-100.

389-12-100**Violations — Sanction.**

If a public depository fails to comply with any of these rules, or of any of the provisions of the act, or any policies of the commission, the commission may at its option deny or revoke the authority of such depository to act as a public depository, or otherwise suspend such depository from receiving or holding public deposits until such time as the depository complies with the commission's rules and policies.

389-12-120**Administration.**

The Washington public deposit protection commission shall be administered through the office of the Washington State Treasurer, Legislative Building, Olympia, Washington.

389-12-130**Financial institution mergers.**

The maximum liability of a public depository under chapter 39.58 RCW shall not be altered or diminished by any merger, take over, or acquisition. Such liability shall be assumed by agreement or operation of law by the successor entity or resulting financial institution and no assets subject to a depository pledge agreement shall be released by the commission or the trustee until such assumed liability is evidenced by the deposit of assets pursuant to the depository pledge agreement of the successor entity or resulting financial institution.

389-12-140**Demand deposit account with financial institution located outside the state of Washington.**

A treasurer or state treasurer may, with the approval of the commission, establish a demand deposit account with an out-of-state bank or an alien bank. Prior to establishing such account, a treasurer or state treasurer shall submit, in writing, for review by the commission, the following information: (1) Detailed information setting forth the justification for such account, projected cash flows, and other benefits which will accrue to the public entity through the establishment of such account; (2) period of time such account will be in use; (3) reasons such account cannot be established with a public depository; (4) name and

location of financial institution or alien bank and name and telephone number of contact person at financial institution or alien bank; (5) extent of deposit insurance provided by financial institution or alien bank; (6) most recent fiscal year end and quarterly financial report, if any, provided to regulatory agency and/or shareholders by financial institution or alien bank; (7) proposed method of ensuring safety of deposits if not fully covered by deposit insurance, and (8) such other information as the commission reasonably may require.

The account shall not be established until it shall have been authorized by a resolution of the commission or action authorized by the chair, setting forth the terms and conditions for such account. A copy of such resolution will be forwarded to the public entity and the state auditor.

Accounts authorized under this section are not considered to be protected against loss by the Public Deposit Protection Act.

389-12-200

Purpose.

The purpose of this chapter shall be to ensure compliance by the Washington public deposit protection commission with the provisions of chapter 42.56 RCW, chapter 274, Laws of 2005, dealing with public records.

389-12-210

Definitions.

(1) "Public record" includes any writing containing information relating to the conduct of governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.

(2) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all paper, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums and other documents.

(3) The "Washington public deposit protection commission" is the commission established by chapter 39.58 RCW. The Washington state public deposit protection commission shall hereinafter be referred to as the "commission." Where appropriate, the term Washington public deposit protection commission also refers to the staff and employees of the commission.

389-12-220

Description of the Washington public deposit protection commission.

The Washington public deposit protection commission is a state agency empowered to perform all duties prescribed by law with respect to the collateralization of public funds. The administrative offices of the commission are located in the Office of the State Treasurer, Legislative Building, Olympia, Washington.

389-12-230

Operations and procedures.

The Washington public deposit protection commission is charged with the duty of protecting public funds on deposit by Washington's public treasurers and the state treasurer in the event of a default of a public depository, and such other duties as set forth in chapter 39.58 RCW.

389-12-240**Public records available.**

All public records of the Washington public deposit protection commission are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by chapter 42.56 RCW, chapter 274, Laws of 2005.

389-12-250**Public records officer.**

The Washington public deposit protection commission's public records shall be in the charge of the public records officer designated by the agency. The person so designated shall be located in the administrative office of the agency. The public records officer shall be responsible for the following: The implementation of the Washington public deposit protection commission's rules and regulations regarding release of public records, coordinating the staff of the commission in this regard, and generally insuring compliance by the staff with the public records disclosure requirements. Persons submitting public record requests pursuant to these rules should submit those requests to Public Records Officer, Public Deposit Protection Commission, Office of the State Treasurer, Legislative Building, Olympia, Washington 98504.

389-12-270**Requests for public records.**

In accordance with requirements of chapter 42.56 RCW, chapter 274, Laws of 2005:

(1) A request shall be made in writing upon the form set forth in these rules herein or a substantially similar form. The form shall be presented to the public records officer, or to any member of the commission's staff, if the public records officer is not available, at the administrative office of the commission during customary office hours. Any request on a form other than the form provided in these rules shall include the following information:

- (a) The name of the person requesting the record;
- (b) The time of day and calendar date on which the request is made;
- (c) The specified record requested;
- (d) The postal or electronic address at which the requester will accept written communication.

(2) All record requests shall be for a writing as that term is defined in statute, relating to the conduct of the public deposit protection commission, and prepared, owned, or retained by the commission. Requests shall be made by mail or verifiably received and acknowledged electronic mail.

389-12-280**Inspection and copying.**

No fee shall be charged for the inspection of public records. Records shall be made available for inspection in accordance with chapter 42.56 RCW. Inspection shall occur at a time mutually agreed by the agency and requestor during customary office hours at a designated office location of the office of the state treasurer in Olympia, Washington. If copies are requested, the commission shall charge a fee of not to exceed 15 cents per page, or actual costs as provided in RCW 42.56.070, of copy for providing copies of public records. This charge shall not exceed the amount necessary to reimburse the commission for its actual costs incident to such copying.

389-12-290

Exemptions.

(1) The commission reserves the right to assert that a public record requested in accordance with the procedures outlined in WAC 389-12-270, is exempt from disclosure under Washington law.

(2) The commission reserves the right to delete information exempted from disclosure under Washington law.

(3) All denials of requests for public records shall be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.

389-12-300

Review of denials of public records requests.

(1) Any person who objects to the denial of a request for a public record may petition for prompt review of such a decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it to the state treasurer as chairman of the commission. The chairman shall consider the matter and either affirm or reverse such denial or call a special meeting of the Washington public deposit protection commission as soon as legally possible to review the denial. In any case, the request shall be returned with a final decision, within two business days following the original denial.

(3) Administrative remedies shall not be considered exhausted until the commission has returned the petition with a decision or until the close of the second business day following denial of inspection, whichever occurs first.

389-12-310

Records index.

It is unduly burdensome for the commission to prepare and maintain an index of their materials since there is no appropriation provision for administrative staff and all of the duties prescribed by statute are conducted by state treasurer staff members, in addition to their regularly assigned duties regardless of overtime requirements and without regard to additional pay. All records of the commission are and will be made available in accordance with the due processes as set forth in these rules and other applicable law.

389-12-320

Request for commission's decisions and other matters — Procedure.

All communications with the commission including but not limited to the submission of materials pertaining to its operations and/or the administration or enforcement of chapter 42.56 RCW, chapter 274, Laws of 2005, and these rules, requests for copies of the commission's decisions and other matters, shall be addressed as follows: Public Deposit Protection Commission, Office of State Treasurer, Legislative Building, Olympia, Washington, 98504.

