

Virginia Security for Public Deposits Act Regulations

1VAC75-20-10. General.

A. The definitions provided by § 2.2-4401 of the Code of Virginia shall be used throughout this chapter unless the context requires otherwise.

B. The Treasury Board has designated the State Treasurer to be the chief administrative officer with respect to the provisions of the Virginia Security for Public Deposits Act (the "Act") (§ 2.2-4400 et seq. of the Code of Virginia) and the State Treasurer reserves the right to designate a representative to act on his behalf.

C. The primary responsibility for compliance with the Act rests upon the financial institutions that accept and hold public deposits. If the deposit is a "public deposit," the deposit must be secured pursuant to the Act. If a depositor or a depository is unable to ascertain whether a particular deposit is a "public deposit" for purposes of the Act, they should obtain information about the purpose of the account, the custodian of the account, and under what authority the account was established and communicate with the State Treasurer's office. A final determination will be made by the State Treasurer's office with the assistance of the Office of the Attorney General, if needed.

1VAC75-20-20. (Repealed.)

1VAC75-20-30. Collateral requirements for qualified public depositories.

A. The Treasury Board shall establish the required collateral that qualified public depositories must pledge to secure public deposit balances in excess of insurance coverage provided by the Federal Deposit Insurance Corporation based on resolutions and guidelines approved by the Treasury Board. These collateral requirements shall be made available for public access. Public depositors and qualified public depositories will be notified of changes to the requirements in advance of their effective dates.

B. In the event a depository's average daily public deposits for the immediately preceding month exceed one-fifth of its average daily total deposits for that month, the required collateral will be in accordance with the Treasury Board's established collateral requirements with the added stipulation that no public deposit be collateralized at less than 75% of the actual public deposits held at the close of business on the last day of the immediately preceding month, or no public deposit be collateralized at less than 75% of the average balance of public deposits for the immediately preceding month, whichever is greater.

C. In the event a depository's average daily public deposits for the immediately preceding month exceed one-fifth of its average daily total deposits and the depository has not been actively engaged in the commercial banking business for at least three years, or in the event that a depository's average daily public deposits for the immediately preceding month exceed one-third of its average daily total deposits, or in the event that a depository has not been actively engaged in the commercial banking business for at least one year, the required collateral will be no less than 100% of the actual public deposits held at the close of business on the last day of the immediately preceding month, or no less than 100% of the average balance of public deposits for the immediately preceding month, whichever is greater.

D. In the event a depository has violated the Security for Public Deposits Act or this chapter, or for other reasons deemed prudent by the Treasury Board, such as the deteriorating financial condition of the depository or the failure to meet compliance requirements established by the

Treasury Board pursuant to 1VAC75-20-130, the Treasury Board may increase the depository's collateral requirement.

1VAC75-20-40. (Repealed.)

1VAC75-20-50. Average daily balance computation.

A. The average daily balance for any month shall be derived by dividing the sum of the daily balances of any item being computed by the number of calendar days in the month.

B. In computing the amount of public deposits and the average balance of public deposits to be collateralized during any month, there shall be excluded the amount of each deposit that is insured by the Federal Deposit Insurance Corporation.

1VAC75-20-60. Eligible collateral.

A. Securities eligible for collateral are limited to:

1. Obligations of the Commonwealth. Bonds, notes, and other evidences of indebtedness of the Commonwealth of Virginia, and securities unconditionally guaranteed as to the payment of principal and interest by the Commonwealth of Virginia.

2. Obligations of the United States. Bonds, notes, and other obligations of the United States, and securities unconditionally guaranteed as to the payment of principal and interest by the United States, or any agency thereof.

3. Obligations of Virginia counties, cities, and other public bodies. Bonds, notes, and other evidences of indebtedness of any county, city, town, district, authority or other public body of the Commonwealth upon which there is no default provided that such bonds, notes, and other evidences of indebtedness of any county, city, town, district, authority or other public body are either direct legal obligations of, or unconditionally guaranteed as to the payment of principal and interest by, the county, city, town, district, authority or other public body in question and revenue bonds issued by agencies or authorities of the Commonwealth or its political subdivisions upon which there is no default and which are rated Baa2 or better by Moody's Investors Service, Inc. or BBB or better by Fitch Ratings, Inc. or Standard & Poor's Financial Services LLC.

4. Bonds and other obligations issued, guaranteed, or assumed by the International Bank for Reconstruction and Development by the African Development Bank, or by the Asian Development Bank.

5. Obligations partially insured or guaranteed by any U.S. Government Agency.

6. Obligations (including revenue bonds) of states, other than Virginia, and their municipalities or political subdivisions rated A2 or better by Moody's Investors Service, Inc. or A or better by Fitch Ratings, Inc. or Standard & Poor's Financial Services LLC.

7. Any additional securities approved by the Treasury Board pursuant to § 2.2-4405.4 of the Code of Virginia.

B. Federal Home Loan Bank letters of credit issued in accordance with the Security for Public Deposits Act are eligible as collateral.

C. No security which is in default as to principal or interest shall be acceptable as collateral.

D. No qualified public depository shall utilize securities issued by itself, its holding company, or any affiliate for purposes of collateralizing its public deposits.

E. Securities excluded by action of the Treasury Board pursuant to § 2.2-4405.4 of the Code of Virginia shall not be acceptable.

1VAC75-20-70. Valuation of collateral.

A. Each qualified public depository shall value its securities for reporting purposes at current market value as of the close of business on the last day of the immediately preceding month.

Weekly, qualified public depositories that have elected the dedicated method of collateralization must additionally report current market values as of the close of business on Friday of the immediately preceding week. At all times the current market value of collateral must be equal to or greater than a depository's required collateral as defined in 1VAC75-20-30 and 1VAC75-20-80. Current market value is defined as the market value of a security priced on a same day basis or no older than one business day. Business day is defined as any day other than a Saturday, Sunday, a legal holiday, or a day in which banking institutions are authorized or required by law or other governmental action to be closed.

B. The Treasury Board may require that certain securities that are difficult-to-value or subject to rapid declines in value or otherwise represent a risk of decrease in value be valued at a rate less than 100% of their market value. Accordingly, this shall apply to all of the following security types: mortgage-backed securities (MBS) and collateralized mortgage obligations (CMO) issued by U.S. agencies or government-sponsored enterprises (GSE) shall be valued at 80% of their market value; obligations (bonds, notes, and other evidences of indebtedness) of the Commonwealth of Virginia and any Virginia county, city, town, authority or other public body shall be valued at 90% of their market value; and obligations (bonds, notes, and other evidences of indebtedness) of other states and their municipalities and political subdivisions shall be valued at 80% of their market value. Qualified public depositories shall have six months from July 1, 2023, to adjust their pledged collateral, if necessary.

1VAC75-20-80. Deposit of collateral.

A. No qualified public depository shall accept or retain any public deposit that is required to be secured unless it has previously executed a "Public Deposit Security Agreement," approved by the depository's Board of Directors or Loan Committee, with such approval reflected in the minutes of said board or committee. The depository shall maintain the security agreement as an official record continuously from the time of its execution. The depository must also have deposited eligible collateral, as defined in this chapter, equal to its required collateral, determined as provided in this chapter, with an eligible escrow agent approved by the State Treasurer. Each depository is responsible for providing a written notification and executing new agreements upon its name change.

B. Whether or not a qualified public depository has eligible collateral deposited as provided at the time it receives a public deposit, if such deposit would result in an increase in the qualified public depository's required collateral computed as of the day on which the deposit is received, such qualified public depository shall immediately deposit sufficient securities to increase its collateral to an amount equal to that determined pursuant to 1VAC75-20-30 utilizing the qualified public depository's actual public deposits held at the close of business on the day such deposit is received. Written notice of deposit of collateral shall be submitted to the Treasury Board.

1VAC75-20-90. Substitution of eligible collateral.

A. A substitution of eligible collateral may be made by the qualified public depository at any time provided that the current market value of the collateral substituted is equal to or greater than the current market value of the collateral withdrawn.

B. At the time of making a collateral substitution, the qualified public depository shall prepare a request for the substitution upon a form approved by the Treasury Board and provide it to the escrow agent and to the Treasury Board. The escrow agent shall not allow a collateral substitution unless the current market value of the collateral to be substituted is equal to or greater than the current market value of the collateral to be withdrawn. Current market value for the escrow agent in regards to a substitution is the market value of a security priced on a same day basis or no older than one business day prior to the date of the substitution. The escrow agent shall calculate adjustments to the current market value of collateral that the Treasury Board has identified as

difficult-to-value or subject to rapid declines in value or otherwise represents a risk of decrease in value at the time of substitution to determine if the market value is equal to or greater than the value of the collateral to be withdrawn in accordance with 1VAC75-20-70.

C. In the event the current market value of the substituted collateral is not equal to or greater than the value of the collateral to be withdrawn as determined in accordance with 1VAC75-20-70, the qualified public depository shall obtain written approval of the Treasury Board to substitute the collateral.

1VAC75-20-100. Withdrawal of collateral.

A qualified public depository shall not be permitted to withdraw collateral previously pledged without the prior written approval of the Treasury Board. The Treasury Board may grant such approval only if the qualified public depository certifies in writing that such withdrawal will not reduce the current market value of its pledged collateral below its required collateral as defined by these regulations, and this certification is substantiated by a statement reporting the qualified public depository's current public deposits which indicates that after withdrawal such deposits will continue to be secured to the full extent required by the law and regulations. Current public deposits for this purpose are the amount of public deposits held at the time of withdrawal of collateral. The escrow agent shall not permit the qualified public depository to withdraw collateral without the prior written approval of the Treasury Board.

1VAC75-20-110. Reports by qualified public depositories.

A. Within 10 calendar days after the end of the month, each qualified public depository shall submit to the Treasury Board an electronic report of such data required by the Treasury Board, certified as to its accuracy by an authorized official of the qualified public depository. The report shall include the total amount of public deposits held by it at the close of business on the last day in the immediately preceding month; the average daily balance for such month of all public deposits held by it during the immediately preceding month; the average daily balance of all bank deposits for the immediately preceding month; the total required collateral; the total par value and the total current market value of collateral at the close of business on the last day in the immediately preceding month; and the average daily collateral balance. Included with this report shall be a detailed schedule of pledged collateral to include, but not limited to, the security description, coupon rate, CUSIP (Committee on Uniform Securities Identification Procedures) number, maturity date, debt rating by Moody's Investors Service, Inc., Fitch Ratings, Inc. or Standard & Poor's Financial Services LLC, par value amount, book or principal value amount and current market value amount, determined pursuant to 1VAC75-20-70.

B. Qualified public depositories selecting the dedicated method to collateralize their public deposit balances shall also submit reports similar to those outlined in A. each week for the immediately preceding week.

C. At the request of a public depositor for which a qualified public depository holds deposits, within 10 calendar days after the end of a month, the qualified public depository shall submit a statement indicating the total public deposits in each account to the credit of such depositor on the last banking day in the immediately preceding month and the total amount of all public deposits held by it upon such date.

D. Within the first 10 calendar days of each quarter, qualified public depositories shall submit to the Treasury Board an electronic report by public deposit account to include the account number, type of account (demand or savings), full name of account, name of public entity, custodian name and title, federal tax identification number, amount on deposit in the account, amount on deposit secured by federal deposit insurance, and amount of deposit secured by pledged collateral. Qualified public depositories shall also within the first 10 calendar days of each quarter provide to each public depositor for whom it holds public deposits, a schedule detailing the public deposit accounts reported to the Treasury Board for that depositor, indicating the

account name and number, type of account, amount on deposit secured by federal deposit insurance, and total account amount to be secured by its pledged collateral.

E. By the 10th calendar day of July, qualified public depositories shall submit an annual certification from an independent certified public accountant or their internal audit department, attesting to the accuracy of the public deposit balances reported to the Treasury Board during their previous fiscal year in accordance with the instructions issued by the Treasury Board.

1VAC75-20-120. Reports by State Treasurer.

The State Treasurer shall make available to public depositors and their auditors reports of compliance irregularities of public depositories including, but not limited to, undercollateralization and repeated late filings of required compliance reports. The Treasury Board shall be notified of compliance irregularities during its regularly scheduled meetings.

1VAC75-20-130. Eligibility criteria and compliance requirements for qualified public depositories.

Pursuant to the power granted under § 2.2-4405 of the Code of Virginia, the Treasury Board may establish criteria to become a qualified public depository and compliance requirements for continued eligibility.

1. To become a qualified public depository, the minimum qualifications are that a bank:
 - a. Meet the requirements of a qualified public depository as defined in § 2.2-4401 of the Code of Virginia.
 - b. Have an Average or above rating from the Treasury Board's designated rating service for the most recent eight calendar quarters.
 - c. Cannot be under a formal federal or state bank regulatory enforcement action that would impair its ability to serve as a qualified public depository, to be determined on a case-by-case basis. Banks will be required to disclose to the Treasury Board any such formal enforcement actions currently in force.
2. For continued eligibility, compliance requirements are:
 - a. Sufficient collateralization – Pooled method. If a qualified public depository using the pooled method of collateralization is undercollateralized three months in a rolling 12-month period, the Treasury Board may take action, including but not limited to the following, as it deems appropriate:
 - (1) Increase the depository's collateral requirement.
 - (2) Prohibit the depository from opening any new public deposit accounts.
 - (3) Restrict the types of securities the depository may pledge as collateral.
 - b. Sufficient collateralization – Dedicated method. If a qualified public depository using the dedicated method of collateralization is undercollateralized for weekly reporting, it may be penalized accordingly.
 - c. Timely monitoring and collateralization of public deposit balances. Failing to monitor public deposit balances daily and pledge additional collateral when necessary may result in the Treasury Board taking action, including but not limited to the actions outlined in subdivisions 2.a. (1) - (3) of this section.
 - d. Timely reporting. If a qualified public depository reports late or otherwise fails to report when required, the Treasury Board may take action as it deems necessary.
 - e. Rating from Treasury Board's designated rating service.
 - (1) Pooled method: If the depository's rating should fall below Average, the collateral requirement will increase to at least 100% of public deposits, net of Federal Deposit Insurance Corporation coverage, until the rating is again Average or above for

two consecutive quarters. If the depository's rating should fall into the rating service's lowest rating tier, the Treasury Board may restrict the types of securities the depository may pledge as eligible collateral, or require securities be valued at less than 100%, or both.

(2) Dedicated method: If the depository's rating should fall from one category to another, the collateral requirement will be increased accordingly.

1VAC75-20-140. Eligibility criteria and compliance requirements for escrow agents.

All escrow agent requirements shall be outlined under a "Master Custodial Agreement" to be signed by an authorized officer for the escrow agent and the State Treasurer, acting on behalf of the Treasury Board. A depository may have no more than one escrow agreement for Virginia public deposits in effect at any given time period. The escrow agent is responsible for providing a written notification and executing new agreements upon its name change. An escrow agent selected by a qualified public depository for the purpose of holding collateral pledged to the Treasury Board under the Act must meet the following requirements:

1. To become an escrow agent, the minimum requirements are that an entity:
 - a. Be a bank or trust company organized under federal law, Virginia law, or under the laws of another state.
 - b. Be located in Virginia, meaning it has a main office or branch office in the Commonwealth where deposits are accepted, checks are paid, and money is lent, or where similar services required by an escrow agent under the Security for Public Deposits Act Master Custodial Agreement are offered. Existing escrow agents not located in Virginia are exempt from this requirement.
 - c. Have an Average or above rating from the Treasury Board's designated rating service for the most recent eight calendar quarters.
 - d. Cannot be under a formal federal or state bank regulatory enforcement action that would impair its ability to serve as an escrow agent, to be determined on a case-by-case basis. Banks will be required to disclose to the Treasury Board any such formal enforcement actions currently in force.
 - e. Be an independent entity in the performance of its duties on behalf of the Treasury Board. The escrow agent may not be the depository itself, its holding company, or any affiliate of the depository.
2. For continued eligibility, compliance requirements are:
 - a. The escrow agent shall hold in a separate account for the Treasury Board eligible collateral pledged under the provisions of the Act and, if acting as escrow for more than one public depository, a separate account must be opened for each depository. The escrow shall hold the eligible collateral in a section of the institution that is separate from daily activities performed by that institution, such as its trust department, and be held accountable for the regulatory requirements of such department.
 - b. The escrow agent must be able to ascertain whether pledged collateral is eligible collateral in accordance with 1VAC75-20-60. The escrow agent shall distribute all interest, dividends, or other income for the pledged securities to the depository and such income shall be payable thereto provided the escrow agent has not received written notice from the Treasury Board that the depository is in a condition of "default or insolvency" as defined in the Act, in which event the escrow agent shall hold such income subject to the order of the Treasury Board.
 - c. The escrow agent shall price securities held as collateral at a current market value no older than one business day from the date of a substitution of collateral, as of the close of business on the last day of the month for monthly reporting purposes, and as

of the close of business Friday for weekly reporting purposes for depositories using the dedicated method.

d. The escrow agent shall adhere to the reporting requirements as detailed in the "Master Custodial Agreement" and the "Public Deposit Security Agreement."

e. The escrow agent shall allow substitutions in accordance with 1VAC75-20-90.

f. The escrow agent shall ensure that withdrawals of collateral will be in accordance with 1VAC75-20-100.

The State Treasurer, acting on behalf of the Treasury Board, will determine that an escrow agent is eligible based upon the criteria established under this section prior to executing the "Master Custodial Agreement" and the "Public Deposit Security Agreement." The State Treasurer may request information from an escrow agent to substantiate its ability to meet the aforementioned criteria.

In the event an escrow agent violates the requirements of the "Master Custodial Agreement" or the "Public Deposit Security Agreement," the State Treasurer shall notify the escrow agent and applicable public depositories of the violation and require the escrow agent to comply with all terms of the agreements. The escrow agent must provide the State Treasurer and public depositories a written statement, within 30 days of the notification, outlining how and when the violations will be remedied. This statement must be acceptable to the State Treasurer, who will monitor adherence to it. If the escrow agent fails to provide a statement or adhere to its remediation plan or continues to violate the agreements, the Treasury Board may take disciplinary action, up to and including termination of the "Master Custodial Agreement". Qualified public depositories shall select a new escrow agent after such a disqualification in accordance with Treasury Board instructions.

After "disqualification," an escrow agent may request approval from the Treasury Board to be reinstated as an eligible escrow agent if correction of prior deficiencies is demonstrated.

1VAC75-20-150. Suspension of authority to receive public deposits.

For failure to comply with the Virginia Security for Public Deposits Act or this chapter, the Treasury Board may rescind the authority of a qualified public depository to open new public deposit accounts or accept new deposits into existing public deposit accounts in accordance with 1VAC75-20-130. A depository that continues to hold public deposits after its authority to do so has been rescinded remains fully subject to the provisions of the Act. This includes, without limitation, continuing to meet collateralization and reporting requirements and acting as a qualified public depository for purposes of §§ 2.2-4403 and 2.2-4404 of the Code of Virginia.

1VAC75-20-160. Exception reportings by public depositors.

Upon receipt of the quarterly public depositor report, as outlined in 1VAC75-20-110, public depositors shall notify the State Treasurer of any unresolved discrepancy between the information provided and the public depositors' records. Additionally, public depositors shall verify and confirm to the Department of the Treasury their account balances as reported by the "Public Fund Accounts" search feature on the Department of the Treasury's website after the end of each quarter to ensure their public funds accounts are being properly reported to the Treasury Board by their qualified public depositories.

FORMS (1VAC75-20)

Master Custodial Agreement (filed 1/2022)

Public Deposit Security Agreement (filed 1/2022)