

Title 389 WAC

PUBLIC DEPOSIT PROTECTION COMMISSION

Chapter
389-12 **Practice and procedure—Public**
 depositories.

Chapter 389-12 WAC

PRACTICE AND PROCEDURE—PUBLIC DEPOSITARIES

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

389-12-070	Rate of interest. [Order II, § 389-12-070, filed 6/13/73; Order 1, § 389-12-070, filed 2/9/70.] Re- pealed by Order XII, filed 1/28/75.
389-12-110	Reserved. [Order 1, § 389-12-110, filed 2/9/70.] Re- pealed by Order 77-XIII, filed 9/27/77.

WAC 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 95, Laws of 1977 1st ex. sess., hereinafter referred to as the "act", hereby adopts and promulgates the following rules and regulations, effective -----, 1977. [Order 77-XIII, § 389-12-010, filed 9/27/77; Order II, § 389-12-010, filed 6/13/73; Order 1, § 389-12-010, filed 2/9/70.]

WAC 389-12-020 Definitions. Unless the context requires otherwise:

(1) **Bank.** "Bank" means any state bank or trust company, national banking association, or any branch of a bank engaged in the banking business in this state in accordance with RCW 30.04.300, which is located in the state of Washington and authorized to do a general banking business therein.

(2) **Investment deposits.** The term "investment deposit" shall mean bank time deposits and savings deposits of public funds available for investment. Bank time deposit shall mean a single maturity or multiple maturity interest bearing investment deposit of public funds evidenced by a certificate of deposit issued by a bank payable to a treasurer on a date certain. Such certificate shall not be negotiable except between treasurers and/or banks.

(3) **Call report date.** "Call report date" shall mean the date designated by the comptroller of currency for reports of the statement of condition of a bank.

(4) **Date of loss.** The term "date of loss" shall mean 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 bank by a supervisory agency; or

(b) The date of the appointment of the receiver or conservator for a bank; or

(c) The date of the commencement of a voluntary liquidation proceeding for a bank; or

(d) The date on which the commission declares that a bank no longer has the ability to repay public deposits in full.

(5) **Depository Pledge Agreement.** "Depository Pledge Agreement" means a written tri-party agreement, on a form supplied by the commission, wherein a bank, in compliance with the act and as a condition precedent to becoming or continuing to be a qualified public depository, transfers and delivers securities which are eligible collateral to a corporate fiduciary under the exercise of its trust powers, or a federal reserve bank or any branch thereof, 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.

(6) **Segregation of collateral.** "Segregation of collateral" means the transfer and delivery of eligible securities by a bank pursuant to a depository pledge agreement (RCW 39.58.050). Eligible securities shall not include coupon securities from which have been detached any

coupon which is not matured at the time of transfer and delivery of such securities as segregated collateral.

(7) **Subordinated notes and debentures.** Capital, surplus and undivided profits of a bank or trust company shall include all capital notes and debentures that are subordinate to the interest of depositors. [Order 77-XIII, § 389-12-020, filed 9/27/77; Order II, § 389-12-020, filed 6/13/73; Order 1, § 389-12-020, filed 2/9/70.]

WAC 389-12-030 New banks. Any newly chartered bank in the state of Washington, in order to become a qualified public depository, 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 new depositories have submitted four consecutive 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 all public funds on deposit in said depository. During the interim period in which a newly chartered bank is required to file four consecutive reports, each such bank shall report to the commission on each call report date on forms supplied by the commission. [Order 77-XIII, § 389-12-030, filed 9/27/77; Order II, § 389-12-030, filed 6/13/73; Order 1, § 389-12-030, filed 2/9/70.]

WAC 389-12-040 Computation and report of maximum liability. On each call report date each public depository shall recompute its maximum liability on a form to be supplied by the commission. Such report shall, in addition to other information, show the current amount of "deposits of states and political subdivisions" for the most recent call report date, the "deposits of states and political subdivisions" as shown on the four most recent reports of condition (i.e., current call report and three immediately preceding call reports), the average of the four report periods, and the depository's maximum liability as defined in RCW 39.58.010(6).

The report to the commission shall be received in the office of the commission not later than the due date for filing of reports of condition with the comptroller of the currency of the United States or the Washington state supervisor of banking, and shall have attached a completed copy of the balance sheet portion of the depository's most recent consolidated report of condition (domestic subsidiaries). Upon request from a bank the commission may, for good cause shown, extend the due date for qualified public depository liability reports for a period not to exceed ten days.

If the maximum liability indicates a necessity, the depository shall immediately increase its collateral and the commission shall be so notified.

Each public depository shall provide to the commission a copy of any changes, amendments, or alterations to the depository's report of condition which relate to (a) deposits of states and political subdivision, (b) subordinated notes and debentures, (c) capital, (d) surplus, (e) undivided profits and/or (f) reserve for contingencies and other capital reserves. [Order 77-XIII, § 389-12-

040, filed 9/27/77; Order II, § 389-12-040, filed 6/13/73; Order 1, § 389-12-040, filed 2/9/70.]

WAC 389-12-050 Valuation. Securities pledged as collateral by a qualified public depository may be reported at par value or market value at the option of the reporting depository. This valuation option may be utilized only by those banks who have been qualified public depositories for one full year and who have previously submitted four consecutive reports to the commission.

(1) **Market value.** Securities pledged as collateral shall be valued at market value computed on the date of segregation or the last preceding call report date, whichever is last in point of time. When the public depository liability report is submitted, any depository choosing to evaluate their securities pledged as collateral based on market value shall provide on a form supplied by the commission a current listing of those securities pledged and their then current market value. Securities pledged as collateral at market value must at least be equal to the maximum liability of the public depository (RCW 39.58.010(6)).

(2) **Par value.** A bank may value its securities pledged as collateral at par if it maintains a segregation of collateral equal to at least 120% of its maximum liability. [Order 77-XIII, § 389-12-050, filed 9/27/77; Order II, § 389-12-050, filed 6/13/73; Order 1, § 389-12-050, filed 2/9/70.]

WAC 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 depository 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 qualified depository 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 and under these rules and regulations. Compliance with the foregoing requirement shall be the depository's responsibility regardless of the frequency and form of reports required by the commission. [Order 77-XIII, § 389-12-060, filed 9/27/77; Order II, § 389-12-060, filed 6/13/73; Order 1, § 389-12-060, filed 2/9/70.]

WAC 389-12-080 Maximum deposit limitation. In determining the maximum deposit limitation by any bank, a treasurer, unless advised to the contrary by the commission, may assume that each bank's capital, surplus, undivided profits and subordinated notes and debentures have remained unchanged from that stated in the most recently rendered call report. [Order 77-XIII,

§ 389-12-080, filed 9/27/77; Order 1, § 389-12-080, filed 2/9/70.]

WAC 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 depositaries 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. [Order 77-XIII, § 389-12-090, filed 9/27/77; Order 1, § 389-12-090, filed 2/9/70.]

WAC 389-12-100 Violations—Penalty. Violations of any of these rules or of any of the provisions of the act shall be grounds for cancellation, suspension, or revocation of a bank's authority to act as a public depositary. [Order 1, § 389-12-100, filed 2/9/70.]

WAC 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. [Order 1, § 389-12-120, filed 2/9/70.]

WAC 389-12-130 Bank mergers. The liability of a public depositary under chapter 39.58 RCW shall not be altered by any merger, take-over or acquisition except to the extent that such liability is assumed by the successor entity and no assets subject to a depositary 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 depositary pledge agreement of the successor entity. [Order II, § 389-12-130, filed 6/13/73.]

WAC 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 1, Laws of 1973 (Initiative 276), Disclosure-Campaign-Finances-Lobbying-Records; and in particular with Section 25-32 of that act, dealing with public records. [Order XII, § 389-12-200, filed 11/28/73.]

WAC 389-12-210 Definitions. (1) **Public records.** "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.** "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) **Washington public deposit commission.** 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. [Order XII, § 389-12-210, filed 11/28/73.]

WAC 389-12-220 Description of central and field organization of the Washington public deposit protection commission. (1) **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 Washington public deposit protection commission and its staff are located in the state treasurer's office in the Legislative Building, Olympia, Washington. [Order XII, § 389-12-220, filed 11/28/73.]

WAC 389-12-230 Operations and procedures. The Washington public deposit protection commission is charged with the duty of protecting public deposits for public treasurers in the event of a bank default, and such other duties as set forth in RCW 39.58.010 through 39.58.040. [Order 77-XIII, § 389-12-230, filed 9/27/77; Order XII, § 389-12-230, filed 11/28/73.]

WAC 389-12-240 Public records available. All public records of the Washington public deposit protection commission as defined in WAC 389-12-210 are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by section 31, chapter 1, Laws of 1973 and WAC 389-12-210. [Order XII, § 389-12-240, filed 11/28/73.]

WAC 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 of chapter 1, Laws of 1973. [Order XII, § 389-12-250, filed 11/28/73.]

WAC 389-12-260 Office hours. Public records shall be available for inspection and copying during the customary office hours of the Washington public deposit protection commission. For the purpose of this chapter, the customary office hours shall be from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. [Order XII, § 389-12-260, filed 11/28/73.]

WAC 389-12-270 Requests for public records. In accordance with requirements of chapter 1, Laws of 1973, that agencies prevent unreasonable invasions of

privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied or copies of such records may be obtained, by members of the public, upon compliance with the following procedures:

(1) A request shall be made in writing upon a form prescribed by the Washington public deposit protection commission which shall be available at its administrative office. The form shall be presented to the public records officer, or to any member of the commission's staff, if the public records office is not available, at the administrative office of the commission during customary office hours. The request 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 was made;
- (c) The nature of the request;
- (d) If the matter requested is referenced within the current index maintained by the records officer, a reference to the requested record as it is described in such current index;
- (e) If the requested matter is not identifiable by reference to the commission's current index, an appropriate description of the record requested.

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or staff member to whom the request is made, to assist the member of the public in appropriately identifying the public record requested. [Order XII, § 389-12-270, filed 11/28/73.]

WAC 389-12-280 Copying. No fee shall be charged for the inspection of public records. The commission shall charge a fee of not to exceed 25 cents per page 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. [Order XII, § 389-12-280, filed 11/28/73.]

WAC 389-12-290 Exemptions. (1) The commission reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 389-12-270, is exempt under the provisions of section 31, chapter 1, Laws of 1973.

(2) In addition, pursuant to section 26, chapter 1, Laws of 1973, the commission reserves the right to delete identifying details when it makes available or publishes any public record, in any cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 1, Laws of 1973. The public records officer will fully justify such deletion in writing.

(3) All denials of requests for public records must 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. [Order XII, § 389-12-290, filed 11/28/73.]

WAC 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 system has returned the petition with a decision or until the close of the second business day following denial of inspection, whichever occurs first. [Order XII, § 389-12-300, filed 11/28/73.]

WAC 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. [Order XII, § 389-12-310, filed 11/28/73.]

WAC 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 1, Laws of 1973, and these rules, requests for copies of the commission's decisions and other matters, shall be addressed as follows: Washington Public Deposit Protection Commission, c/o Office of State Treasurer, Legislative Building, Olympia, Washington, 98504. [Order XII, § 389-12-320, filed 11/28/73.]

WAC 389-12-330 Adoption of form. The commission hereby adopts for use by all persons requesting inspection and/or copying or copies of the records, the form attached hereto as Appendix A, entitled "Request for Public Record." [Order XII, § 389-12-330, filed 11/28/73.]

WAC 389-12-990 Appendix A—Form—Request for public records.

APPENDIX A
REQUEST FOR PUBLIC RECORDS

Name of Requestor:

Address:

Phone:

Date of Request:

Time of Request:

Nature of Request:

- 1. Index Reference
2. If not identifiable by reference to the index, then describe the document(s) in detail

Signature

For Office Use Only:

- (1) Request Record Withheld
Granted [] Withheld [] In Part []
(2) If withheld, name the exemption contained in section 31, chapter 1, Laws of 1973, which authorizes the withholding of the record or part of record: Subsection (1) ().
(3) If withheld, briefly explain how the exemption applies to the record withheld.
(4) If request granted, time , day

[Order XII, Appendix A—Form (codified as WAC 389-12-990), filed 11/28/73.]