

100-035, filed 8/19/83; 82-17-072 (Order 1868), § 388-100-035, filed 8/18/82; 82-04-071 (Order 1754), § 388-100-035, filed 2/3/82; 81-16-032 (Order 1684), § 388-100-035, filed 7/29/81.]

Title 389 WAC PUBLIC DEPOSIT PROTECTION COMMISSION

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

Chapter 389-12 WAC PRACTICE AND PROCEDURE--PUBLIC DEPOSITORIES

WAC

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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 sess., as last amended by chapter 177, Laws of 1984, hereinafter referred to as the "act," hereby adopts and promulgates the following rules and regulations, effective October 10, 1984. [Statutory Authority: RCW 39-.58.040. 84-21-036 (Order 84-II, Resolution No. 84-004), § 389-12-010, filed 10/11/84; 84-03-037 (Order 84-01), § 389-12-010, filed 1/13/84; 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) **Qualified public depository.** "Qualified public depository" means a financial institution which does not claim exemption from the payment of any sales or compensating use or ad valorem taxes under the laws of this state, which has segregated for the benefit of the commission eligible collateral having a value of not less than its maximum liability and which has been approved by the commission to hold public deposits.

(2) **Financial institution.** A "financial institution" means any of the following which are located in this state and are lawfully engaged in business:

(a) **Bank depositories**—Any branch of a bank engaged in the banking business in this state in accordance with

RCW 30.04.300, and any state bank or trust company or national banking association.

(b) **Thrift depositories**—Any state chartered mutual savings bank or stock savings bank, any state or federally chartered savings and loan association (including federally chartered savings bank).

(3) **Investment deposits.** The term "investment deposit" shall mean time deposits and savings deposits of public funds available for investment. Savings deposit shall mean an interest bearing deposit of public funds that is subject to withdrawal and that is not payable on a specified date or at the expiration of a specified time after the date of deposit. Time deposit shall mean a single maturity or multiple maturity interest bearing investment deposit of public funds, which is either evidenced by a certificate of deposit issued by a qualified public depository, or reflected in a book-entry system of such depository approved by federal regulatory authorities, state supervisor of banking and/or state supervisor of savings and loan associations, and which is payable to a treasurer on a date certain. Such certificate shall not be negotiable, nor an interest in an investment deposit transferable, except between treasurers and/or qualified public depositories.

(4) **Commission report.** The "commission report" shall mean a formal accounting rendered by qualified public depositories to the commission, which details pertinent information of each depository as of the close of the last business day of each calendar quarter; the commission report is due in the office of the commission not later than thirty days after the end of the calendar quarter.

(5) **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 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.

(6) **Depository pledge agreement.** "Depository pledge agreement" means a written tri-party 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 qualified public depository, transfers and delivers securities which are eligible collateral to a corporate fiduciary under the exercise of its trust powers, to a federal reserve bank or any branch thereof or federal home loan 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.

(7) **Segregation of collateral.** "Segregation of collateral" means the transfer and delivery of eligible securities by a qualified public depository pursuant to a depository pledge agreement (RCW 39.58.050). A depository wishing to reduce the amount of securities pledged as collateral must submit a written request to the commission. The trustee holding the collateral shall not allow a reduction of securities without the prior written approval of the commission. 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. When a qualified public depository pledges eligible securities whose payments include a periodic principal reduction, the depository shall promptly advise the commission of the dates and amounts of such principal payments.

(8) **Net worth.** "Net worth" of a qualified public depository means:

(a) For a bank depository, the aggregate of capital, surplus, undivided profits and all capital notes and debentures which are subordinate to the interest of depositors;

(b) For a thrift depository, the aggregate of such capital stock, guaranty fund, general reserves, surplus, undivided profits, and all capital notes and debentures which are subordinate to the interest of depositors, as are eligible for inclusion in otherwise determining the net worth of a mutual savings bank, stock savings bank, or savings and loan association, excluding appraised equity capital and income capital and net worth certificates.

(9) **Corporate fiduciary.** "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. [Statutory Authority: RCW 39.58.040. 84-21-036 (Order 84-II, Resolution No. 84-004), § 389-12-020, filed 10/11/84; 84-03-037 (Order 84-01), § 389-12-020, filed 1/13/84; 78-12-075 (Order 78-XIV, Resolution No. 78-XIV), § 389-12-020, filed 12/5/78; Order 77-XIII, § 389-12-020, filed 9/27/77; Order II, § 389-12-020, filed 6/13/73; Order I, § 389-12-020, filed 2/9/70.]

WAC 389-12-030 New qualified public depositories. Any financial institution in the state of Washington eligible under the act, 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 qualified 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 financial institution is required to file four consecutive reports, each such institution shall report to the commission on each commission report date on forms supplied by the commission. [Statutory Authority: RCW 39.58.040. 84-21-036 (Order 84-II, Resolution No. 84-004), § 389-12-030, filed 10/11/84; 84-03-037 (Order 84-01), § 389-12-030, filed 1/13/84; Order 77-XIII, § 389-12-030, filed 9/27/77; Order II, § 389-12-030, filed 6/13/73; Order I, § 389-12-030, filed 2/9/70.]

WAC 389-12-040 Computation and report of maximum liability. On each commission 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 Washington state and its political subdivisions for the most recent commission report date, such deposits as shown on the four most recent reports (i.e., current report and three immediately preceding reports), the average of these deposits for 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 thirty days following each calendar quarter end, and shall have attached a completed copy of the balance sheet portion of the depository's most recent consolidated report of condition or most recent report to the Federal Home Loan Bank, whichever is applicable.

At the end of each calendar quarter, the commission shall provide appropriate reporting forms to each qualified public depository and the amount constituting thirty percent of total public funds on deposit in Washington state for the preceding quarter. Depositories will use this figure for the current report period and to monitor their total public funds on deposit for the ensuing quarter, unless notified of a revised figure by the commission.

Upon written request from a depository the commission may, for good cause shown, extend the due date for commission reports for a period not to exceed ten days.

If the maximum liability has increased from the previous report or if aggregate public deposits exceed the limitations prescribed in section 19, chapter 177, Laws of 1984, 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 financial report as submitted to appropriate regulatory authority which relate to (a) deposits of states and political subdivision, and/or (b) net worth. [Statutory Authority: RCW 39.58.040. 84-21-036 (Order 84-II, Resolution No. 84-004), § 389-12-040, filed 10/11/84; 84-03-037 (Order 84-01), § 389-12-040, filed 1/13/84; Order 77-XIII, § 389-12-040, filed 9/27/77; Order II, § 389-12-040, filed 6/13/73; Order I, § 389-12-040, filed 2/9/70.]

WAC 389-12-050 Valuation. Securities pledged as collateral by a qualified public depository shall be reported at 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 on a form supplied by the commission a current listing of those securities pledged and their then current market and par value. [Statutory Authority: RCW 39.58.040. 84-21-036 (Order 84-II, Resolution No. 84-004), § 389-12-050, filed 10/11/84; 84-03-037 (Order 84-01), § 389-12-050, filed 1/13/84; 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 389-12-065 Aggregate deposit limitations.

Whenever the public funds on deposit in a qualified public depository exceed the limits set forth in section 19, chapter 177, Laws of 1984, such depository 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 depository's net worth position is reduced, such depository shall determine if any public treasurer's funds on deposit exceed the revised net worth. If any such excess deposits exist, the depository shall immediately notify the commission and provide the commission with a detailed accounting of deposits. The depository 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 section 18, chapter 177, Laws of 1984. [Statutory Authority: RCW 39.58.040. 84-21-036 (Order 84-II, Resolution No. 84-004), § 389-12-065, filed 10/11/84.]

WAC 389-12-080 Maximum deposit limitation. In determining the maximum deposit limitation of any financial institution, a treasurer, unless advised to the contrary by the commission, may assume that each depository's net worth has remained unchanged from that stated in the most recently rendered commission report. [Statutory Authority: RCW 39.58.040. 84-21-036 (Order 84-II, Resolution No. 84-004), § 389-12-080, filed 10/11/84; 84-03-037 (Order 84-01), § 389-12-080, filed 1/13/84; Order 77-XIII, § 389-12-080, filed 9/27/77; Order 1, § 389-12-080, 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 financial institution's authority to act as a public depository. [Statutory Authority: RCW 39.58.040. 84-03-037 (Order 84-01), § 389-12-100, filed 1/13/84; Order 1, § 389-12-100, filed 2/9/70.]

WAC 389-12-130 Financial institution mergers. The liability of a public depository 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 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. [Statutory Authority: RCW 39.58.040. 84-03-037 (Order 84-01), § 389-12-130, filed 1/13/84; Order II, § 389-12-130, filed 6/13/73.]

WAC 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 in the event of a default of a qualified public depository, and such other duties as set forth in chapter 39.58 RCW. [Statutory Authority: RCW 39.58.040. 84-21-036 (Order 84-II, Resolution No. 84-004), § 389-12-230, filed 10/11/84; 84-03-037 (Order 84-01), § 389-12-230, filed 1/13/84; Order 77-XIII, § 389-12-230, filed 9/27/77; Order XII, § 389-12-230, 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 officer 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. [Statutory Authority: RCW 39.58.040. 84-03-037 (Order 84-01), § 389-12-270, filed 1/13/84; Order XII, § 389-12-270, filed 11/28/73.]