

## TITLE 2. ADMINISTRATION

## CHAPTER 14. OFFICE OF THE ARIZONA STATE TREASURER - STATEWIDE COLLATERAL POOL

Authority: A.R.S. § 35-1202

## ARTICLE 1. STATEWIDE COLLATERAL POOL

## Section

R2-14-101.	Definitions
R2-14-102.	Participation Mandatory
R2-14-103.	Collateral Required
R2-14-104.	Increasing, Releasing, and Substituting Eligible Collateral
R2-14-105.	Reports Required
R2-14-106.	Use of Reports
R2-14-107.	Fee Assessment
R2-14-108.	Payment of Losses
R2-14-109.	Civil Penalty for Noncompliance; Hearing

## ARTICLE 1. STATEWIDE COLLATERAL POOL

## R2-14-101. Definitions

- A. The definitions in A.R.S. § 35-1201 apply to this Chapter.
- B. Additionally, in this Chapter:
1. "Collateral pool" means the method of securing repayment of uninsured balances of public deposits made with an eligible depository through the pledge of eligible investments specified under A.R.S. § 35-323.
  2. "CUSIP" means Committee on Uniform Security Identification Procedures and refers to a nine character alphanumeric code that uniquely identifies a financial security.
  3. "EST" means Eastern Standard Time.
  4. "FDIC" means the Federal Deposit Insurance Corporation.
  5. "Treasurer" means the Office of the Arizona State Treasurer.
  6. "Uninsured" means public monies deposited with an eligible depository that exceed the amount insured by an instrumentality of the United States.

## Historical Note

New Section made by final rulemaking at 21 A.A.R. 233, effective April 4, 2015 (Supp. 15-1).

## R2-14-102. Participation Mandatory

- A. Public depositors.
1. Except as provided under A.R.S. § 35-1204(B), all public depositors shall place deposits of uninsured public monies with an eligible depository.
  2. A public depositor that decides to exercise the exemption provided under A.R.S. § 35-1204(B) shall provide written notice of the decision to the Administrator.
- B. Eligible depositories. Except as provided in subsections (B)(1) and (2), an eligible depository that accepts or retains public monies shall pledge required collateral to the collateral pool.
1. An eligible depository that accepts and retains only insured public monies is not required to pledge collateral to the collateral pool. However, the eligible depository shall provide a notarized statement to the Administrator that lists:
    - a. Each public depositor for which the eligible depository is retaining public monies,
    - b. The deposit balance for each public depositor, and
    - c. The total insurance available for each public depositor.
  2. An eligible depository that accepts and retains all public monies in the trust department of the eligible depository and secures the public monies under 12 U.S.C. Section 92a is not required to pledge collateral to the collateral pool.
- C. An eligible depository doing business in Arizona that does not accept or retain public monies shall attest to this fact on a notarized statement that is available from the Administrator.

## Historical Note

New Section made by final rulemaking at 21 A.A.R. 233, effective April 4, 2015 (Supp. 15-1).

## R2-14-103. Collateral Required

- A. An eligible depository that intends to accept and retain uninsured public monies shall execute a Collateral Security Agreement with the Treasurer, using a form that is available on the web site of the Treasurer. In the agreement, the eligible depository shall pledge for the benefit of the Treasurer eligible collateral having a market value of at least 102 percent of the retained amount of uninsured public monies.
- B. An eligible depository shall deposit all eligible collateral, including a letter of credit that satisfies the requirements at A.R.S. §§ 35-312(A)(4) and 35-323(G)(4), with a qualified escrow agent that will hold the required collateral in trust for the use and benefit of the Treasurer on behalf of the collateral pool.
- C. An eligible depository that does not have a preferred qualified escrow agent may ask the Administrator for permission to use the Treasurer's existing custodial contracts as a qualified escrow agent.
- D. An eligible depository that has pledged required collateral to a housing authority in an amount and manner required by the United States Department of Housing and Urban Development is not required to pledge additional collateral to the collateral pool. However, the eligible depository shall include the HUD-related public monies in the reports required under R2-14-105.
- E. If an eligible depository uses a security as eligible collateral, the eligible depository shall:
  1. At the time the security is deposited with a qualified escrow agent, forward to the Administrator the par and market value of the security, identified by the security's CUSIP, and the source of the valuation. The Administrator shall, from time to time, test the market value of the security using an independent source; and
  2. If the security matures or is called for redemption, the cash proceeds will be retained by the qualified escrow agent until substitute collateral is pledged to replace the matured or called security.

## Historical Note

New Section made by final rulemaking at 21 A.A.R. 233, effective April 4, 2015 (Supp. 15-1).

## R2-14-104. Increasing, Releasing, and Substituting Eligible Collateral

- A. If a public depositor anticipates making a late-day (5:00 p.m. EST or later) increase in the amount of public monies deposited with an eligible depository, the public depositor shall notify the Administrator. The Administrator shall notify the eligible depository of the anticipated deposit and if needed, require that additional eligible collateral be pledged.
- B. If an eligible depository determines that the amount of eligible collateral deposited with a qualified escrow agent exceeds the amount required under R2-14-103(A), the eligible depository may request that the Administrator release the excess collateral or if the collateral is a letter of credit, consent to a reduction in the face amount of credit. The Administrator shall approve the request as soon as the Administrator determines that the amount of collateral held by the qualified escrow agent exceeds the amount required.
- C. Except as provided in A.R.S. § 35-1208(C), an eligible depository may make substitutions of pledged eligible collateral if the amount of required collateral is maintained.

## Historical Note

New Section made by final rulemaking at 21 A.A.R. 233, effective April 4, 2015 (Supp. 15-1).

**R2-14-105. Reports Required**

- A.** Contact information. An eligible depository shall provide the Administrator, using a form available on the Treasurer's web site, with the following:
- Information the Administrator needs to contact the individual responsible for ensuring that the eligible depository complies with A.R.S. Title 35, Chapter 10, and this Chapter;
  - Information the Administrator needs to contact each public depositor including:
    - Name and physical address of the public depositor; and
    - Telephone and fax numbers and e-mail address of the individual who is to receive monthly statements from the Administrator; and
  - Updated information promptly after any of the information provided under subsection (A)(1) or (2) changes.
- B.** Daily report. An eligible depository shall provide the Administrator, using a form or format available on the Treasurer's web site or another form or format approved by the Administrator, a summary report no later than 12:30 p.m. EST every business day. The report, which shall be transmitted electronically, shall contain the following information:
- Name of eligible depository making the report,
  - Date of report,
  - Demand-deposit ledger balance,
  - Interest-bearing ledger balance,
  - Amount of deposits covered by the FDIC,
  - Amount of uninsured deposits,
  - Amount of required collateral,
  - CUSIPs of the collateral pledged to collateral pool,
  - Market value of collateral pledged to collateral pool,
  - Original par value of collateral pledged to collateral pool,
  - Number of demand-deposit accounts of public monies, and
  - Number of interest-bearing accounts of public monies.
- C.** Monthly report. On or before the eighth day of each month, an eligible depository shall provide the Administrator, using a form or format available on the Treasurer's web site or another form or format approved by the Administrator, a report that contains the following information regarding each public depositor:
- Name of public depositor,
  - Taxpayer identification of the public depositor,
  - Name and number of the public depositor's account,
  - Amount of demand deposit held for the public depositor,
  - Amount of interest-bearing deposit held for the public depositor,
  - Amount of total deposits held for the public depositor,
  - Amount of the public depositor's deposits covered by the FDIC, and
  - Amount of required collateral to protect the public depositor's deposits.
- D.** Detailed daily report. When the Administrator determines that additional information is needed to ensure that all public monies are protected, an eligible depository shall provide the information required under subsections (B) and (C) sorted first by public depositor and second by taxpayer identification number.
- E.** Additional reports. If requested by the Administrator, an eligible depository that is a bank or savings institution shall submit to the Administrator a copy of the quarterly Report of Condition and Income filed with the Federal Financial Institutions Examination Council's Central Data Repository, as required under 12 U.S.C. § 324 (state member banks), 12 U.S.C. § 1817 (state non-member banks), 12 U.S.C. § 161 (national banks), and 12 U.S.C. § 1464 (savings institutions). An eligible depository that is a credit union shall submit to the Administrator a copy of the quarterly Call Report filed with the National Credit Union Administration, as required under 12 U.S.C. 1756.

**Historical Note**

New Section made by final rulemaking at 21 A.A.R. 233, effective April 4, 2015 (Supp. 15-1).

**R2-14-106. Use of Reports**

- A.** If the Administrator determines after reviewing either the daily report or detailed daily report that an eligible depository has pledged insufficient collateral to the collateral pool, the Administrator shall immediately contact the eligible depository and require that additional collateral be pledged.
- B.** An eligible depository that is contacted under subsection (A) shall send a report to the Administrator identifying the additional collateral pledged by CUSIP, par value, and market value.
- C.** If an eligible depository fails to pledge additional collateral as required under subsection (A) or provide the report required under subsection (B) by 3:00 p.m. EST of the day contacted by the Administrator, the Administrator shall take one or more of the following actions:
- Provide written notice to the eligible depository of intent to assess a daily civil penalty of:
    - \$250 for failure to comply with subsection (A), and
    - \$100 for failure to comply with subsection (B);
  - Provide electronic notice of the noncompliance to the:
    - Superintendent of the Department of Financial Institutions, and
    - Public depositors that have deposits with the eligible depository, and
  - Post notice of the noncompliance on the Treasurer's web site.
- D.** The Administrator shall forward an electronic copy of the monthly report to each public depositor within five days after receiving the report. Before the end of the month, each public depositor shall review the monthly report and inform the Administrator of any discrepancy between the information in the monthly report and the account statement provided directly to the public depositor by the eligible depository. If the public depositor fails to inform the Administrator of a discrepancy before the end of the month, the Administrator shall deem the monthly report to be correct.

**Historical Note**

New Section made by final rulemaking at 21 A.A.R. 233, effective April 4, 2015 (Supp. 15-1).

**R2-14-107. Fee Assessment**

- A.** Under A.R.S. § 35-1212, the collateral pool is required to be self-supporting. The Administrator is authorized to assess fair and equitable fees from eligible depositories.
- B.** Annual assessment. The Administrator shall annually assess an eligible depository required under R2-14-102(B) to pledge eligible collateral to the collateral pool an amount that reflects the eligible depository's daily average portion of uninsured public monies on deposit.
- The Administrator shall determine the total amount to be assessed based on expenses incurred to administer and enforce the collateral pool during a calendar year.
  - The Administrator shall inform each eligible depository of the depository's assessed amount by January 15 of each year.
  - An eligible depository shall pay the assessed amount by February 15 of each year.
  - If an eligible depository enters or leaves the collateral pool during a calendar year, the Administrator shall make or refund a partial assessment.
- C.** Additional assessment. When an eligible depository fails to comply fully with A.R.S. Title 35, Chapter 10 or this Chapter, the Administrator incurs extra expenses to administer and enforce the collateral pool. When this happens, the Administrator shall assess an additional fee from the non-complying eligible depository equal to the amount of extra expense incurred by the Administrator.

**Historical Note**

New Section made by final rulemaking at 21 A.A.R. 233, effective April 4, 2015 (Supp. 15-1).

**R2-14-108. Payment of Losses**

- A.** The Administrator shall find that an eligible depository is in

default if the eligible depository:

1. Fails to return to a public depositor public monies including earned interest in accordance with the terms of the depository agreement;
  2. Is subject to a court order or formal action by a supervisory authority that has the effect of restraining the eligible depository from making payments of deposit liabilities; or
  3. Has had a receiver appointed by a supervisory authority.
- B.** If the Administrator determines that an eligible depository is in default or insolvent, the Administrator shall provide notice of the default or insolvency to all public depositors that have deposited public monies with the defaulting or insolvent eligible depository.
- C.** If the Administrator determines that an eligible depository is in default or insolvent, the Administrator shall revoke authorization for the eligible depository to make substitutions of eligible collateral.
- D.** If the Administrator determines that an eligible depository is in default or insolvent, the Administrator, in cooperation with the Arizona Department of Financial Institutions and the receiver appointed for the eligible depository, if any, shall:
1. If the receiver has found a new eligible depository that agrees to accept the public monies deposited with the defaulting or insolvent eligible depository:
    - a. Transfer the required collateral from the defaulting or insolvent eligible depository to the new eligible depository, and
    - b. Provide notice of the transfer to the public depositors; or
  2. If a new eligible depository is not found, take possession of the required collateral and do one or both of the following:
    - a. Liquidate the required collateral in an orderly fashion and distribute the proceeds on a pro-rata basis to the public depositors; or
    - b. Upon request from a public depositor and if it is possible to segregate and divide the required collateral, provide a pro-rata share of the segregated and

divided collateral to the public depositor making the request.

3. If the Administrator determines that the default of an eligible depository is not due to the insolvency or receivership of the eligible depository, any transfer, distribution, or liquidation of required collateral under subsections (D)(1) or (D)(2) by the Administrator will allow the eligible depository to reduce account balances correspondingly for public fund deposits subject to the transfer, distribution, or liquidation.

**Historical Note**

New Section made by final rulemaking at 21 A.A.R. 233, effective April 4, 2015 (Supp. 15-1).

**R2-14-109. Civil Penalty for Noncompliance; Hearing**

- A.** The Administrator may assess a civil penalty in the amount specified under A.R.S. § 35-1211 against an eligible depository for failing to:
1. Maintain required collateral, or
  2. File a report required under R2-14-105.
- B.** If the Administrator determines that an eligible depository has failed to maintain required collateral or file a required report, the Administrator shall serve written notice by certified mail to the eligible depository of intent to assess a civil penalty. The Administrator shall ensure that the notice provides the information required under A.R.S. § 41-1092.03(A).
- C.** An eligible depository that receives notice under subsection (B) may make a written request for a hearing. The eligible depository shall make the request for hearing within 30 days after receipt of the notice under subsection (B).
- D.** At least 20 days before a scheduled hearing, an eligible depository may make a written request for an informal settlement conference.
- E.** The Administrator shall ensure that hearings are conducted using the procedures in A.R.S. Title 41, Chapter 6, Article 10 and rules of the Office of Administrative Hearings.

**Historical Note**

New Section made by final rulemaking at 21 A.A.R. 233, effective April 4, 2015 (Supp. 15-1).