

CHAPTER 3
DEPOSIT AND SECURITY OF PUBLIC FUNDS IN SAVINGS AND LOANS

781—3.1(12C) Scope and transition.

3.1(1) Iowa Code chapter 12C authorizes the treasurer of state to establish administrative rules and procedures to secure deposits of public funds in banks, savings and loans and credit unions. This chapter contains rules applicable to securing deposits of public funds in savings and loans. Rules applicable to securing public funds in credit unions are contained in 781—Chapter 14, and rules applicable to securing public funds in banks are contained in 781—Chapter 13.

3.1(2) Public units and savings and loans shall have until June 30, 1993, to convert existing security and custodial agreements to Form 655-0205.

781—3.2(12C) Definitions. As used in this chapter:

“Approved custodian” means the Federal Home Loan Bank of Des Moines, Iowa.

“Eligible collateral” means any of the securities specified in Iowa Code section 12C.16(1)“b” provided that the securities are acceptable to the public unit and to the approved custodian.

“Federal Home Loan Bank” means the Federal Home Loan Bank of which the savings and loan is a member.

“Letter of credit” means an irrevocable, nontransferable, standby letter of credit (Form 655-0198) issued directly to the public unit by the Federal Home Loan Bank.

“Market value” means the value of a pledged security calculated by using the average of the closing bid and ask price from a nationally recognized pricing source including, but not limited to, the Wall Street Journal, Bloomberg Financial Markets, Telerate, Reuter’s, or a nationally recognized broker dealer.

“Pledged collateral” or *“pledged securities”* means eligible collateral pledged by a savings and loan to a public unit to secure uninsured public deposits.

“Public units” means the public bodies mentioned in Iowa Code sections 12C.1(1) and 12C.1(2)“b” and including, but not limited to, the following entities:

1. Cities.
2. Transit authorities.
3. Municipal utilities, including jointly owned.
4. Public libraries, city and regional.
5. Municipal housing programs.
6. Solid waste agencies.
7. Waterworks.
8. City cemeteries.
9. County offices including treasurers, recorders, clerks of court, sheriffs and auditors.
10. Townships.
11. County fair boards.
12. Regional planning agencies.
13. County care facilities.
14. County hospitals.
15. County conservation boards.

16. Sanitary districts.
17. Treasurer of state.
18. Alcoholic beverages division.
19. Iowa department of transportation.
20. Judicial district department of correctional services.
21. Iowa finance authority.
22. Iowa family farm development authority.
23. Iowa railway finance authority.
24. State board of regents.
25. State fair board.
26. State commerce commission.
27. State racing commission.
28. Iowa college student aid commission.
29. Iowa higher education loan authority.
30. School districts.
31. Area education agencies.
32. Community action programs.
33. Community colleges.

Federal agencies, or political subdivisions thereof, are not public units under this chapter.

"Savings and loan" means a savings and loan as defined in Iowa Code section 12C.1(2) "*d.*"

"Treasurer" means the treasurer of the state of Iowa.

"Uninsured public funds" or *"uninsured public deposits"* means the funds of a public unit deposited in a savings and loan which are not federally insured, together with any accrued interest thereon.

781—3.3(12C) Forms. The following forms shall be utilized by savings and loans in connection with the operation of this chapter:

1. (Form 655-0198) Letter of Credit.
2. (Form 655-0204) Deposit Agreement.
3. (Form 655-0205) Security and Custodial Agreement for the Deposit of Public Funds in Savings and Loans.
4. (Form 655-0206) Certification and Approval Form for the Withdrawal, Substitution or Addition of Pledged Securities.
5. (Form 655-0207) Joint Receipt of Custody.

781—3.4(12C) Methods of securing uninsured public deposits in savings and loans. Uninsured public deposits in a savings and loan shall be secured by either a letter of credit (Form 655-0198) or by the pledge of eligible collateral to the public unit pursuant to the requirements of this chapter.

781—3.5(12C) Securing uninsured public deposits in savings and loans using a letter of credit.

3.5(1) A savings and loan may secure an uninsured public deposit with a letter of credit as defined in these rules and Iowa Code section 12C.16.

3.5(2) The public unit shall have in its possession prior to or simultaneously with the deposit of uninsured public funds in a savings and loan, a deposit agreement (Form 655-0204) and a letter of credit (Form 655-0198) issued by the Federal Home Loan Bank to the public unit in an amount not less than 110 percent of the amount of public funds to be secured thereby.

3.5(3) If the letter of credit secures a demand deposit, the expiration date shall be determined by the public unit and the savings and loan; however, uninsured public funds shall be secured at all times.

3.5(4) The public unit shall keep the letter of credit in a vault or a safe deposit box in a financial institution other than the savings and loan in which the deposit was made, until such time as the letter of credit expires or is presented for payment to the Federal Home Loan Bank.

3.5(5) If the letter of credit secures a time deposit, the letter of credit shall have an expiration date which is at least ten business days later than the maturity date of the time deposit. In the event that the public unit decides to extend the maturity of its time deposit after the issuance of the letter of credit, the public unit shall obtain a new letter of credit from the Federal Home Loan Bank that takes into account the extended maturity date of the time deposit. The new letter of credit shall be obtained by the public unit prior to the maturity date of the original time deposit.

781—3.6(12C) Securing public funds in a savings and loan with a pledge of eligible collateral.

3.6(1) Prior to accepting an uninsured public deposit, a savings and loan shall secure the uninsured public deposit in accordance with Iowa Code chapter 12C and these rules. The savings and loan must:

a. Enter into a Security and Custodial Agreement for the Deposit of Public Funds in Savings and Loans (Form 655-0205) with the public unit and the approved custodian.

b. Enter into a deposit agreement (Form 655-0204) with the public unit.

c. Deliver to the approved custodian eligible collateral with a market value of not less than 110 percent of the uninsured public deposits.

3.6(2) A savings and loan shall grant a security interest to the public unit in all pledged securities to secure the uninsured public funds of that public unit. The savings and loan shall take all steps necessary to ensure that the public unit has a valid, perfected, enforceable, first priority security interest in the pledged collateral. The savings and loan shall enter into a security agreement (Form 655-0205) with the public unit and the approved custodian, and shall transfer pledged collateral to the approved custodian which shall hold the pledged collateral in safekeeping for the public unit.

3.6(3) The savings and loan shall maintain eligible collateral with the approved custodian with a total market value of not less than 110 percent of a public unit's total deposits which are not otherwise secured by a letter of credit.

3.6(4) A savings and loan shall promptly forward to the approved custodian payment for fees associated with the approved custodian's services as safekeeping agent for the public unit upon receipt of a statement from the approved custodian.

3.6(5) A savings and loan shall not attempt to withdraw pledged collateral from the approved custodian if such action will cause the total market value of pledged collateral to fall below 110 percent of a public unit's total uninsured deposits which are not otherwise secured by a letter of credit.

3.6(6) A savings and loan shall promptly notify the public unit and the approved custodian, in writing, of any change in its name or home office location.

3.6(7) A savings and loan shall receive written approval from the public unit for the withdrawal or substitution of any pledged collateral by completing the Certification and Approval Form for the Withdrawal, Substitution or Addition of Pledged Securities (Form 655-0206) and delivering it to the public unit with the request for the public unit's written approval to withdraw or substitute pledged securities. The public unit, if it approves of the withdrawal or substitution of pledged securities, shall forward the completed form to the approved custodian.

3.6(8) Any request by a savings and loan to withdraw pledged securities or to substitute securities which will result in a total market value of less than 110 percent of the public unit's public deposits, which are not otherwise secured by a letter of credit, shall be denied by the public unit.

3.6(9) The approved custodian shall comply with a savings and loan's request for the withdrawal, substitution or addition of pledged collateral when it receives a completed Certification and Approval Form for the Withdrawal, Substitution or Addition of Pledged Securities (Form 655-0206) containing the authorized signatures of the public unit and the savings and loan.

3.6(10) The approved custodian will issue a Joint Receipt of Custody (Form 655-0207) to the public unit and to the savings and loan evidencing the pledge of any securities under the security agreement between the public unit and the savings and loan. In the event of substitution or exchange of securities, the approved custodian shall forward by mail to the public unit a Joint Receipt of Custody (Form 655-0207).

3.6(11) If a pledged security matures, then the principal amount of the cash must be held in trust by the approved custodian for the public unit until the public unit has determined that releasing the cash will not cause the total market value of all pledged securities by the savings and loan to fall below the 110 percent requirement.

3.6(12) The securities used to secure the uninsured public deposits in savings and loans shall be acceptable to the public unit and the approved custodian and shall be one or more of those securities specified in rule 3.2(12C) of this chapter under the definition of "eligible collateral."

3.6(13) The public unit or the approved custodian has the right to refuse any security offered as collateral, notwithstanding its inclusion in Iowa Code section 12C.16(1) "b" or these rules, for reasons relating to difficulty of valuation, uncertainty as to the ability to sell a security in the event of default, questions as to ownership, or impossibility of creating a valid and perfected security interest in favor of the public unit.

3.6(14) The acceptance of a security as collateral by the approved custodian or the public unit does not prevent the public unit from requiring substitution of said security at a later time as a result of statutory or regulatory amendment or other changes which affect the valuation, marketability, liquidity, ownership, or perfectibility of the security or the enforceability of the public unit's security interest.

3.6(15) Securities which are issued in certificated or definitive form are eligible collateral only if they are registered in the name of the public unit's approved custodian, or are in otherwise negotiable form acceptable to the public unit.

3.6(16) No security which requires any additional endorsement, assignment or power of attorney for liquidation is eligible collateral.

781—3.7(12C) Duties of the approved custodian.

3.7(1) An approved custodian shall enter into a Security and Custodial Agreement for the Deposit of Public Funds in Savings and Loans (Form 655-0205) with the public unit and the savings and loan.

3.7(2) An approved custodian shall accept only collateral which is eligible to be pledged under these rules.

3.7(3) An approved custodian shall segregate all collateral, maintaining open, notorious, continuous, active and exclusive possession of the collateral for the benefit of the public unit.

3.7(4) An approved custodian shall permit the withdrawal or substitution or addition of pledged securities only upon receipt of a Certification and Approval Form for the Withdrawal, Substitution or Addition of Pledged Securities (Form 655-0206), which contains the signatures of authorized persons representing the savings and loan and the public unit. Receipt of the authorization by facsimile transmission shall be adequate documentation to allow the approved custodian to release or accept pledged securities. The approved custodian shall implement procedures for documenting signatures of authorized persons of a savings and loan and the public unit.

3.7(5) An approved custodian shall issue a Joint Receipt of Custody (Form 655-0207) to the public unit and the savings and loan each time that a savings and loan substitutes new securities for pledged securities or a savings and loan pledges additional pledged securities.

3.7(6) An approved custodian shall establish a fee schedule for its services. Any and all such fees shall be the responsibility of, and be paid by, the respective savings and loan.

3.7(7) In the event that the public unit notifies an approved custodian of the default of a savings and loan, it shall thereafter act only upon the public unit's instructions with regard to any pledged securities.

3.7(8) An approved custodian shall, no later than the twentieth day of each month, provide a written report to those public units for which it serves as approved custodian. The following items shall be provided in the report:

a. The name of the savings and loan which has pledged securities to secure the uninsured public funds of the public unit.

b. An inventory of all pledged securities as of the last day of the preceding month which provides a description of the pledged securities and the par amount, maturity date, and market value of each.

c. The total par value and market value of all pledged securities as of the last day of the preceding month.

3.7(9) An approved custodian shall determine the market values of pledged securities as of the last day of the month for purposes of reporting to the public unit.

781—3.8(12C) Termination of savings and loan's federal insurance. In the event that a savings and loan's applicable federal deposit insurance is suspended or terminated, the savings and loan must notify the public unit immediately and shall immediately return all deposits to the public unit with accrued interest.

781—3.9(12C) Sale or merger of a savings and loan. The responsibility of a savings and loan to secure uninsured public deposits shall not be altered by any merger, takeover or acquisition, except to the extent that such duty is assumed by the successor entity. A savings and loan shall immediately notify the public unit in writing of its merger, takeover or acquisition by a successor entity.

781—3.10(12C) Prohibition on ownership or control. The approved custodian shall not be owned or controlled directly or indirectly by a savings and loan pledging securities to collateralize public funds.

781—3.11(12C) Procedures upon default.

3.11(1) The acceptance of public funds deposits by a savings and loan constitutes consent by the savings and loan to assessments by the treasurer to cover losses of public funds in other savings and loans in accordance with Iowa Code section 12C.23 and the rules contained in this chapter.

3.11(2) Upon notification from a public unit that a public unit has not been completely repaid its principal and interest for a deposit, and upon notification that such principal and interest is not available from a letter of credit or pledged securities securing such deposit, the treasurer shall assess all savings and loans in the state with public deposits as provided in Iowa Code section 12C.23.

3.11(3) A savings and loan and any security given for the public funds in its possession are liable for payment if the savings and loan fails to pay a check, draft, or warrant drawn by the public officer or to account for a check, draft, warrant, order or certificates of deposit, or any public funds entrusted to it if in failing to pay the savings and loan acts contrary to the terms of an agreement between the savings and loan and the public body treasurer or, if the savings and loan fails to pay an assessment, by the treasurer of state when due.

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