

CHAPTER 13
DEPOSIT AND SECURITY OF PUBLIC FUNDS IN BANKS

781—13.1(12C) Scope and transition procedures.

13.1(1) Iowa Code chapter 12C grants authority to the treasurer of state to establish administrative rules and procedures to implement a system for securing deposits of public funds in banks, savings and loans, and credit unions through the pledge of eligible collateral. This chapter shall apply to the system for securing certain deposits of public funds in Iowa banks as defined by Iowa Code section 12C.1, subsection (2a).

13.1(2) Any form, communication, or transaction contemplated by this chapter may be completed and signed by wire transfer or other electronic means authorized by this chapter or as otherwise permitted or accepted by the treasurer. The treasurer may require that communications from an approved custodian to the treasurer be electronic.

781—13.2(12C) Definitions. As used in this chapter:

“Approved custodian” means a financial institution that has facilities for the safekeeping of securities and that has been approved under this chapter by the treasurer of state to serve as the treasurer’s agent in safekeeping collateral pledged to the treasurer of state to secure uninsured deposits of public funds.

“Bank” means “bank” as defined in Iowa Code section 12C.1, subsection (2a).

“Control,” including controlling, controlled by, and under common control, shall be presumed to exist if a pledging bank, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any approved custodian. Control, including controlling, controlled by, and under common control, shall also be presumed to exist if an approved custodian, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any pledging bank.

“Eligible collateral” means any one or any combination of the securities or other forms of collateral as described in Iowa Code section 12C.22, subsection 6, and acceptable to the treasurer. Cash shall be considered eligible collateral.

“Excess public funds” means:

1. For a bank, the amount by which the public funds deposited by a public unit having an aggregate market value plus accrued interest that exceeds the total capital of the bank as defined in Iowa Code section 12C.22, subsection 2.

2. For an out-of-state bank, the amount by which the public funds deposited by a public unit in an Iowa branch of the out-of-state bank having an aggregate market value plus accrued interest that exceeds the Iowa branch capital of the out-of-state bank as determined under Iowa Code section 12C.22, subsection 3.

“Letter of Credit” means an irrevocable and nontransferable Letter of Credit, upon which the payment of principal and interest is fully secured or guaranteed by the United States of America or an agency or instrumentality of the United States of America or in the form prescribed by the treasurer as provided on the treasurer’s Web site at www.treasurer.state.ia.us or in the treasurer’s office pursuant to rule 781—13.3(12C). Letters of Credit will be held in the treasurer’s vault.

“Market value” means the value of a pledged security calculated by the treasurer or the treasurer’s designee 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). If no nationally recognized pricing source is available, the market value shall mean pricing in a commercially reasonable manner or manner consistent with standard industry practices. Market value does not include accrued interest.

“Minimum collateral market value amount” means the minimum dollar amount of eligible collateral required to be pledged by a pledging bank to the treasurer to secure all uninsured public funds which shall at all times equal or exceed excess public funds.

“Out-of-state bank” means a bank that is chartered in a state other than Iowa and operates one or more branches in Iowa.

“Pledged collateral” or *“pledged securities”* means eligible collateral pledged by the pledging bank under the Master Custodial Agreement for the Deposit of Public Funds in Banks, the Pledge and Security Agreement, and any collateral additions or substitutions thereto evidenced by a joint receipt of custody or other evidence of control acceptable to the treasurer.

“Pledging bank” means a bank that is required to pledge eligible collateral pursuant to Iowa Code section 12C.22 and this chapter.

“Public funds” or *“public deposits”* means “public funds” or “public deposits” as defined in Iowa Code section 12C.1, subsection (2e).

“Public units” means the state or a political subdivision or instrumentality of the state including a county, school corporation, special district, drainage district, unincorporated town or township, municipality, or municipal corporation or any agency, board, or commission of the state or a political subdivision; any court or public body; an electric power agency; federal and state grant moneys of a quasi-public state entity under Iowa Code section 12C.1, subsection (2e), and this chapter. Public units additionally include, but are not limited to:

1. Transit authorities.
2. Municipal housing programs.
3. Solid waste agencies.
4. Waterworks.
5. City cemeteries.
6. County fair boards.
7. Regional planning agencies.
8. County care facilities.
9. County conservation boards.
10. Sanitary districts.
11. Iowa family farm development authority.
12. Iowa railway finance authority.
13. State board of regents.
14. State fair board.
15. State racing and gaming commission.
16. Iowa college student aid commission.
17. Iowa higher education loan authority.
18. Area education agencies.
19. Community action programs.
20. Community colleges.

Federal agencies, or political subdivisions thereof, are not public units under this chapter. Cooperatives, police and fire pension funds deposited for the benefit of the beneficiaries and fully covered by federal insurance, and bond sinking funds deposited pursuant to a bond covenant and which are fully covered by federal insurance are not public units.

“Rate-setting notice” means the monthly electronic posting of minimum deposit rates to public units by the rate-setting committee.

“Superintendent” means the superintendent of banking of the state of Iowa.

“Treasurer” means the treasurer of the state of Iowa.

“Uninsured public funds” or *“uninsured public deposits”* means any amount of public funds of a public funds depositor on deposit in an account at a financial institution that exceeds the amount of public funds in that account that are insured by the Federal Deposit Insurance Corporation.

781—13.3(12C) Forms. The following forms are required for compliance with Iowa Code chapter 12C and this chapter. Current versions of each form utilized by banks, pledging banks and approved custodians are available on the treasurer’s Web site at www.treasurer.state.ia.us and in the treasurer’s office.

1. Master Custodial Agreement for the Deposit of Public Funds in Banks.
2. Pledge and Security Agreement.

3. Letter of Credit.
4. Electronic Mail Protocol.
5. Securities Account Control Agreement.
6. Certificate and Approval for Withdrawal, Substitution or Addition of Collateral.
7. Statement of Accounts.
8. Public Depositor Claim Form.
9. Release by Public Deposit.

781—13.4(12C) Duties and responsibilities of a pledging bank.

13.4(1) A pledging bank shall complete, sign, and submit to the treasurer an executed Pledge and Security Agreement.

13.4(2) A savings and loan shall calculate and certify to the superintendent of banking the amount of public funds on deposit at the savings and loan on or before the tenth day of February, May, August, and November of each year as of the end of the previous calendar quarter. An out-of-state bank that has one or more branches in Iowa shall calculate and certify to the superintendent of banking the amount of public funds on deposit at each such branch of the out-of-state bank on or before the tenth day of February, May, August, and November of each year as of the end of the previous calendar quarter.

13.4(3) A pledging bank shall deposit and maintain eligible collateral with the treasurer's approved custodian which at all times has a total market value of not less than the minimum collateral market value amount.

13.4(4) A pledging bank shall at all times be eligible to accept public deposits as required by Iowa Code sections 12C.6A and 12C.23A, subsection 1.

13.4(5) A pledging bank shall grant a perfected security interest to the treasurer in all pledged collateral to secure the repayment of uninsured public funds deposited in a pledging bank and for satisfying any future assessments made against the pledging bank by the treasurer pursuant to Iowa Code chapter 12C. The pledging bank shall take all steps necessary to ensure that the treasurer has a valid, perfected, enforceable, first priority security interest in any pledged collateral. This security interest shall be perfected by entering into a Pledge and Security Agreement with the treasurer and by transferring the eligible collateral to the treasurer's approved custodian. By accepting public funds for deposit, a pledging bank agrees to waive any defenses it may have with respect to any failure of the Pledge and Security Agreement to effect a viable, perfected, enforceable, first priority security interest.

13.4(6) A pledging bank shall promptly and in a timely manner remit to the treasurer's approved custodian payment for fees associated with the treasurer's approved custodian's services as safekeeping agent upon receipt of a statement from the treasurer's approved custodian.

13.4(7) A pledging bank shall not utilize the services of an approved custodian in which the pledging bank or an affiliate has control with the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an approved custodian, including but not limited to the ownership of voting securities. In addition, a pledging bank shall not utilize the services of an approved custodian which is an office of the pledging bank or an affiliate or a subsidiary of the same bank holding company of which the pledging bank is a subsidiary or affiliate as defined in Iowa Code section 12C.22, subsection 1.

13.4(8) A pledging bank shall not use the safekeeping services of more than one approved custodian for the purposes of meeting the requirements of Iowa Code chapter 12C and this chapter.

13.4(9) A pledging bank shall notify the treasurer and the treasurer's approved custodian, in writing or via the treasurer's Web site, of any change in its name or charter location prior to the effective date of such change.

13.4(10) A pledging bank shall provide the treasurer's approved custodian with proper instructions for the delivery of cash and collateral which the treasurer's approved custodian has authorized for the release of collateral to the pledging bank.

781—13.5(12C) Requirements for becoming an approved custodian.

13.5(1) An approved custodian shall complete, sign, and submit to the treasurer an executed Master Custodial Agreement for the Deposit of Public Funds in Banks.

13.5(2) To become an approved custodian, a financial institution chartered outside the state of Iowa must submit a legal opinion acceptable to the treasurer prepared by counsel licensed to practice in the state in which the financial institution is principally located regarding the compatibility of Iowa Code chapter 554 with the uniform commercial code of the state in which the financial institution is principally located.

13.5(3) To be designated as an approved custodian, a financial institution must be capable of maintaining book-entry accounts with a Federal Reserve Bank and must be capable of safekeeping eligible collateral.

13.5(4) An approved custodian shall not hold pledged collateral for any pledging bank in which the approved custodian or an affiliate has control with the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a pledging bank, including but not limited to the ownership of voting securities. In addition, an approved custodian shall not hold pledged collateral for any pledging bank which is an office of the approved custodian or an affiliate or a subsidiary of the same bank holding company of which the approved custodian is a subsidiary or affiliate as defined in Iowa Code section 12C.22, subsection 1.

781—13.6(12C) Duties and responsibilities of an approved custodian.

13.6(1) An approved custodian shall accept only eligible collateral as defined in Iowa Code section 12C.22. Cash shall be considered eligible collateral.

13.6(2) An approved custodian shall segregate all collateral, maintaining open, notorious, continuous, active and exclusive possession of the collateral for the sole and exclusive benefit of the treasurer as an agent for public units.

13.6(3) An approved custodian shall permit the withdrawal, substitution, and addition of eligible pledged securities and other eligible pledged collateral upon receipt of the Certificate and Approval for Withdrawal, Substitution or Addition of Collateral form from the pledging bank. However, before the approved custodian may act upon the written request of the pledging bank, the approved custodian shall verify that the pledging bank has completed and signed the above form and that the calculation of its total collateral market value, after the current withdrawals, substitutions, or additions, is equal to or exceeds its current total excess public funds.

13.6(4) An approved custodian shall issue to the treasurer, by regular mail on the same day, a joint receipt specifically describing and identifying any substituted or additional securities or other collateral pledged to the treasurer.

13.6(5) An approved custodian shall establish a fee schedule for its services. Any and all such fees shall be the sole responsibility of, and be billed directly to, the respective pledging bank. Under no circumstances will the treasurer be responsible or liable for any fees, charges, or expenses of an approved custodian.

13.6(6) In the event that the treasurer notifies an approved custodian of the default of a pledging bank, the approved custodian shall thereafter act only upon the treasurer's instructions with regard to any pledged collateral, cash, and Letters of Credit.

13.6(7) An approved custodian shall, no later than the twentieth day following the end of a calendar quarter, provide a written report to the treasurer in a format approved by the treasurer. The following items shall be provided for each pledging bank for which it serves as approved custodian:

- a. The pledging bank's name and its location.
- b. An inventory of all pledged collateral, as of the last day of the calendar quarter, which provides the CUSIP (the industry's numerical identification code given to each class and issue of security), description, coupon, maturity date, par amount, and market value of each security pledged by each pledging bank.
- c. The total par amount and the total market value of all pledged collateral as of the last day of the calendar quarter for each pledging bank.

d. A history providing the CUSIP, description, coupon, maturity date, par amount, market value and date of all additions, substitutions and withdrawals of pledged collateral during the calendar quarter for each pledging bank.

13.6(8) The approved custodian shall also provide such additional information and reports to the treasurer and the superintendent as they or either of them shall request at any time.

781—13.7(12C) Withdrawals, substitutions, and additions of pledged collateral.

13.7(1) A pledging bank shall pledge and maintain eligible collateral with the treasurer's approved custodian, the market value of which at all times equals or exceeds the amount by which the public funds deposits in the pledging bank exceed the total capital of the pledging bank.

13.7(2) A pledging bank shall complete, sign, and submit to the approved custodian a Certificate and Approval for Withdrawal, Substitution or Addition of Collateral form for all withdrawals, substitutions or additions of eligible pledged collateral. Any withdrawals, substitutions or additions of eligible pledged collateral are conditional upon the pledging bank's correct calculation that its total collateral market value amount, after the current withdrawals, substitutions, or additions, is equal to or exceeds its current total excess public funds.

13.7(3) The approved custodian will issue its joint receipt of custody to the treasurer and to the pledging bank evidencing the substitution for or the addition of pledged collateral under the Master Custodial Agreement for the Deposit of Public Funds in Banks.

13.7(4) If a pledged security matures, then the principal amount of the cash shall be held in trust by the approved custodian for the treasurer until the pledging bank completes, signs, and submits a Certificate and Approval for Withdrawal, Substitution or Addition of Collateral form to the approved custodian to release the cash. Any withdrawal of cash is conditional upon the pledging bank's correct calculation that its total collateral market value amount, after the current withdrawal of cash, is equal to or exceeds its current total excess public funds.

13.7(5) Any request by a pledging bank to an approved custodian for the withdrawal or substitution of pledged collateral is conditional upon the approved custodian's receiving proper delivery instructions from the pledging bank for the pledged collateral being released. Furthermore, the release of pledged collateral in a transaction in which substituted collateral is to be pledged in lieu of pledged collateral which is being withdrawn is conditional upon the approved custodian's receiving the substituted collateral before releasing the pledged collateral.

13.7(6) Under no circumstance shall the treasurer be liable for any loss incurred to a pledging bank for failing to release pledged collateral. The treasurer is not liable for any loss incurred by a pledging bank as a result of the pledging bank's failure to substitute new collateral for any pledged collateral which matures.

781—13.8(12C) Eligible collateral provisions.

13.8(1) Pledged collateral shall be one or more of those securities or other items of collateral specified in 781—13.2(12C), definition of "eligible collateral," and shall be acceptable to the treasurer.

13.8(2) The acceptance of a security or other items as collateral by the approved custodian does not prevent the treasurer from requiring substitution of such security or other items at a later time as a result of statutory amendment or other changes or circumstances which affect the valuation, marketability, liquidity, ownership, or perfectibility.

781—13.9(12C) Suspension or termination of approved custodian designation.

13.9(1) An approved custodian may request in writing that the treasurer remove its designation as an approved custodian. Following such a written request, the Master Custodial Agreement for the Deposit of Public Funds in Banks shall terminate pursuant to the terms of those agreements provided; however, no such agreement shall terminate until the pledging bank(s) has secured the services of another approved custodian and all pledged collateral has been properly withdrawn and placed in safekeeping with the successor custodian.

13.9(2) If the treasurer determines that an approved custodian has violated any provisions of Iowa Code chapter 12C, or any other documents or agreements as prescribed by the treasurer, or has failed to fulfill its duties or otherwise committed a breach or default as set out in the Master Custodial Agreement for the Deposit of Public Funds in Banks, the treasurer may immediately suspend or terminate an approved custodian's designation as an approved custodian. The treasurer shall provide the suspended or terminated approved custodian with written notice of its suspension or termination. Upon suspension or termination, each pledging bank utilizing the services of the suspended or terminated approved custodian shall immediately secure the services of another approved custodian, and all pledged collateral shall be immediately withdrawn and placed in safekeeping with the successor approved custodian.

781—13.10(12C) Sale or merger of an approved custodian. If a pledging bank acquires control, direct or indirect, or ownership of its approved custodian, or the approved custodian acquires control, direct or indirect, or ownership of a pledging bank for which it is holding pledged collateral, or if a holding company will become owner of both the approved custodian and the pledging bank, the approved custodian shall immediately notify the treasurer in writing. Each pledging bank that utilizes the services of the approved custodian over which it has acquired control or that is now controlled by the approved custodian shall immediately secure the services of another approved custodian, and all pledged collateral shall be immediately withdrawn and placed in safekeeping with the successor approved custodian.

781—13.11(12C) Suspension or termination.

13.11(1) If the treasurer determines that a pledging bank has violated any provisions of Iowa Code chapter 12C, or any other documents or agreements as prescribed by the treasurer, or has failed to fulfill its duties or otherwise committed a breach or default as set out in the Pledge and Security Agreement or the Securities Account Control Agreement, or applicable federal deposit insurance coverage is suspended or terminated, the treasurer may immediately suspend or terminate a pledging bank's ability to accept uninsured public funds. The treasurer shall provide the suspended or terminated bank and the superintendent with written notice of its suspension or termination. Upon suspension or termination, all uninsured public funds held by the suspended or terminated pledging bank in excess of federal deposit insurance coverage shall be immediately remitted, with interest, to the applicable public unit(s).

13.11(2) Public units having public funds on deposit at a terminated or suspended pledging bank shall be notified of the termination or suspension of a pledging bank by notices included in the monthly rate-setting notice posted on the treasurer's Web site.

781—13.12(12C) Sale or merger of a pledging bank.

13.12(1) The responsibility of a pledging bank to pledge collateral for the security of the uninsured public funds in banks shall not be altered by any merger, takeover, or acquisition, except to the extent that such duty is assumed by the successor entity. No assets shall be released to the successor entity until collateral of an equal value is substituted or all excess public funds are withdrawn from the successor entity.

13.12(2) A pledging bank shall notify the treasurer and the approved custodian, in writing, of its merger, takeover or acquisition by a successor entity prior to the effective date of such an event.

781—13.13(12C) Procedures upon default or closing of a bank.

13.13(1) The acceptance of public funds by a bank constitutes agreement by the bank to pledge collateral as required by Iowa Code section 12C.22, consent by the bank to the disposition of the collateral, consent by the bank to assessments by the treasurer, and agreement by the bank to provide accurate information and to otherwise comply with the requirements of Iowa Code chapter 12C and this chapter.

13.13(2) The treasurer may liquidate the eligible collateral pledged by a pledging bank, including, without limitation, drawing on any Letter of Credit pledged as collateral to the treasurer by a pledging bank, if the treasurer verifies that any of the following have occurred:

a. A public unit notifies the treasurer, or the treasurer determines that said pledging bank has failed to pay a check, draft or warrant drawn by a public officer.

b. A pledging bank has acted contrary to or otherwise breached a term or condition of any agreement which it has entered into with a public unit, the treasurer or an approved custodian.

c. The pledging bank has failed to pay an assessment ordered by the treasurer as required in Iowa Code chapter 12C, or has, as determined by the treasurer, otherwise violated these rules or Iowa Code chapter 12C.

13.13(3) In the event that a pledging bank is closed by any state or federal regulatory officials, the treasurer may proceed to liquidate the collateral pledged by the closed pledging bank, including drawing on any Letters of Credit pledged to the treasurer by the closed pledging bank, notwithstanding the purchase and assumption of the closed pledging bank, and without the necessity of notice to the closed pledging bank, a successor receiver or an assuming entity. When a pledging bank accepts public funds, the pledging bank acknowledges and agrees that in the event of its closure or default, any eligible collateral is subject to unconditional sale or liquidation by the treasurer, with this condition and covenant inuring to and binding any receiver or successor in interest to the closed pledging bank.

13.13(4) In the event the deposits of a closed bank are not purchased and assumed by another bank, the public units with uninsured deposits in the pledging bank shall notify the treasurer of the amount of any claim within 30 days of the closing. The treasurer shall implement the following procedures:

a. The treasurer shall take such steps as are necessary to ensure that the approved custodian acts only upon the treasurer's instructions with regard to any pledged collateral.

b. The treasurer shall provide each public unit which has contacted the treasurer with a Statement of Accounts, a Public Depositor Claim Form, and a Release by Public Depositor. Included with these forms shall be instructions for completing and filing them and the estimated date when the treasurer will pay claims.

c. It shall be the duty and responsibility of each public unit with a potential claim to complete the above forms in cooperation with regulatory officials handling the closing of the pledging bank and to receive the signed confirmation of such officials as to the amount of the claim. The Statement of Accounts shall include the balances of all accounts on the date of closing, any amounts reimbursed by federal insurance coverage, and all interest accrued, at the applicable rate, on unreimbursed balances to the date of payment of claims and the amount of uninsured public funds on deposit. The Statement of Accounts and the Public Depositor Claim Form must be returned to the treasurer within 30 days of the date of the closing of the bank or from the date of receipt from the treasurer.

d. In cooperation with the responsible regulatory officials for the closed bank and the receipt of all Statements of Accounts and Public Depositor Claim Forms, the treasurer shall validate the amount of public funds deposit insurance coverage applicable to the public funds deposits of the closed bank. The treasurer may request that warrants be drawn on the state sinking fund for public funds deposits in banks to reimburse each public unit that has a verified claim.

e. Upon the specified date of payment of claims, warrants for the amounts of verified claims shall be delivered to the public units to the extent funds in the sinking fund are sufficient to cover public funds depositors' claims and expenses of the treasurer including, but not limited to, legal and administrative expenses. The public unit shall sign and deliver the Release by Public Depositor to the treasurer prior to receiving a warrant.

13.13(5) If the applicable deposit insurance, the liquidation of pledged collateral, or the funds received from drawing on any Letters of Credit, and the assets of the bank which are liquidated within 30 days of the closing of the bank are not sufficient to satisfy the loss to public units, then the treasurer shall obtain the additional amount needed to satisfy all remaining claims from the state sinking fund for public deposits in banks to the extent funds in the sinking fund are sufficient to cover public funds depositors' claims and expenses of the treasurer including, but not limited to, legal and administrative expenses.

13.13(6) If the funds in the sinking fund for public deposits in banks are inadequate to cover the remaining loss, the treasurer shall make assessments against all remaining banks whose public funds deposits exceed federal deposit insurance coverage to satisfy the remaining loss. The assessment against

each bank shall be calculated pursuant to Iowa Code chapter 12C and shall be paid by each bank to the treasurer within three business days of the bank's receipt of the treasurer's written assessment notice. If a pledging bank refuses or fails to pay its assessment when due, the treasurer shall satisfy the assessment in whole or in part by liquidating the collateral pledged by any pledging bank or drawing on any Letters of Credit which were pledged as collateral by that pledging bank.

13.13(7) If a pledging bank refuses or fails to pay any assessment and the liquidation of collateral pledged by that pledging bank or the funds received from drawing upon any Letters of Credit pledged as collateral by the pledging bank are not sufficient to satisfy the assessment, the treasurer shall make additional assessments as necessary against other banks which hold uninsured public funds deposits to satisfy any unpaid assessment. Additional assessments shall be determined, collected and satisfied in the same manner as the first assessment.

781—13.14(12C) Fees of the treasurer. The treasurer shall be entitled to reimbursement of all of the treasurer's actual and necessary costs and expenses incurred in the administration of Iowa Code chapter 12C and these rules including, but not limited to, legal expenses and administrative expenses. Such costs and expenses shall be reimbursed by withdrawal from the state sinking fund for public deposits in banks wherein a balance, acceptable to the treasurer and sufficient to meet legal and administrative expenses, shall be maintained. In the event at any time funds in the state sinking fund for public deposits in banks are not sufficient to pay any such reimbursement, the treasurer may make an assessment in the manner provided by Iowa Code section 12C.23A, subsection (3d), provided that no such assessment shall exceed the anticipated costs and expenses in the administration of Iowa Code chapter 12C and these rules for a period greater than one year after the assessment is made.

These rules are intended to implement Iowa Code chapter 12C.

[Filed emergency 9/1/92—published 9/30/92, effective 9/1/92]

[Filed 11/6/92, Notice 9/30/92—published 11/25/92, effective 12/30/92]

[Filed emergency 12/30/92—published 1/20/93, effective 12/30/92]

[Filed emergency 10/26/95—published 11/22/95, effective 10/31/95]

[Filed 4/24/03, Notice 3/19/03—published 5/14/03, effective 6/18/03]