

CHAPTER 15
REQUIRED PUBLIC FUNDS CUSTODIAL AGREEMENT PROVISIONS

781—15.1(12B) Scope.

15.1(1) Iowa Code section 12B.10C requires the treasurer of state to adopt rules requiring the inclusion in public funds custodial agreements of any provisions necessary to prevent loss of public funds. As used in this chapter, “public funds custodial agreement” means any public funds custodial agreement as defined in Iowa Code section 12B.10C.

15.1(2) This chapter shall apply to any public unit, as defined in 781—Chapter 13, which uses a public funds custodial agreement for or relating to the investment of public funds. As used in this chapter, “public funds” means public funds as defined in Iowa Code section 12C.1(2).

15.1(3) A public unit may only enter into a public funds custodial agreement if the custodian is the trust or safekeeping department of a national or state bank located in the state of Iowa that lawfully possesses and exercises fiduciary powers under applicable federal laws or the laws of the state of Iowa. Notwithstanding the foregoing, the treasurer of state may exercise its discretion under Iowa Code section 12C.4 to enter into public funds custodial agreements with a custodian located outside the state of Iowa. Each public unit that enters into a public funds custodial agreement shall require the inclusion in the public funds custodial agreement those provisions contained in rule 781—15.2(12B) of this chapter or substantially equivalent provisions.

15.1(4) Public funds that are invested under the provisions of a resolution or indenture for the issuance of bonds, notes, certificates, warrants, or other evidences of indebtedness are not subject to this chapter.

15.1(5) This chapter does not apply to those entities described in Iowa Code section 12B.10C(4) or to any other entities that may otherwise be exempted by law. This chapter does not apply to public funds custodial agreements entered into by the treasurer of state when such agreements are on behalf of the aforementioned entities.

15.1(6) This chapter does not apply to custodial agreements between an open-end management investment company registered with the federal Securities and Exchange Commission under the federal Investment Company Act of 1940, 15 U.S.C. Sec. 80(a) and a custodian bank.

15.1(7) This chapter does not apply to any custodial agreements entered into by a public unit or the treasurer of state for the purposes of securing public funds deposits under Iowa Code chapter 12C.

15.1(8) This chapter does not apply to Treasury Direct accounts established by a public unit with a federal reserve bank for the purpose of making direct purchases of United States Treasury bills, notes or bonds.

[ARC 1464C, IAB 5/14/14, effective 6/18/14; see Delay note at end of chapter; ARC 1709C, IAB 10/29/14, effective 12/3/14]

781—15.2(12B) Required provisions for inclusion in public funds custodial agreements. All public funds custodial agreements shall be in writing and shall include the following provisions:

15.2(1) The custodian shall represent and warrant that it lawfully possesses and exercises fiduciary powers under applicable federal laws or the laws of the state of Iowa, unless such custodian is located out of state and is used by the treasurer of state for purposes permitted in Iowa Code section 12C.4, and that it has the resources and expertise to act as the custodian of public funds or any security or document of ownership or title evidencing public funds investments and to perform its responsibilities under the public funds custodial agreement.

15.2(2) The scope of duties and services to be performed by the custodian shall be described in detail satisfactory to the public unit and shall include, as applicable, custodial, settlement, collection of income and investment proceeds, reporting, and securities valuation services.

15.2(3) The custodian shall agree to provide the public unit with written confirmation of its custody, on behalf of the public unit, of all assets subject to the public funds custodial agreement.

15.2(4) The custodian shall agree to segregate the public fund’s assets from the custodian’s own assets and to maintain records adequate to describe the public unit’s ownership of or beneficial interest in the assets held by the custodian.

15.2(5) The custodian shall agree to maintain adequate records regarding a description of the assets, all receipts, deliveries and locations of assets, together with a current inventory thereof, all purchases and sales, all receipts and disbursements of cash and all debits and credits pertaining to transactions relating to the assets, including but not limited to interest payments. The custodian shall agree to conduct periodic inspections in order to verify the accuracy of the inventory, including the securities, if any, held by a subcustodian.

15.2(6) The custodian shall agree that all records of investment transactions relating to the public funds custodial agreement and the services provided thereunder, regardless of who performs the services, shall be considered records of the public unit and open to inspection and examination by the public unit, its employees and its designees. To the extent records of investment transactions are maintained by affiliates of the custodian, the custodian shall agree to be responsible to obtain any such records that are in the possession of its affiliates upon reasonable request of the public unit. The custodian shall agree to make all records of investment transactions relating to the public funds custodial agreement and the services provided thereunder available upon reasonable request for inspection and audit by the public unit, its employees or designees, and to allow these records or excerpts of these records to be copied and removed to facilitate the audit or to comply with public records requirements.

15.2(7) If the custodian proposes to use an affiliated subcustodian or other affiliated agent to perform any services in connection with the public funds custodial agreement, the custodian shall agree that it shall be responsible for the acts and omissions of such affiliates as though the acts and omissions of the affiliates were the acts and omissions of the custodian.

15.2(8) The custodian shall agree that it will receive all assets purchased by or for the public unit from the persons through or from whom the same were purchased, and only upon receipt thereof (delivery versus payment basis) pay, out of the assets held on account of the public unit, the total amount payable for the purchase as set forth in the instructions received by the custodian. The custodian shall agree to secure possession of all investment instruments that are the subject of or are the underlying obligations for any repurchase agreement.

15.2(9) The custodian shall agree that it will transfer assets for sale pursuant to instructions delivered to the custodian only upon receipt of the total amount payable to the public unit in connection with the settlement of the transaction, provided that the same conforms to the total amount payable to the public unit as shown in the instructions with respect to such sale. No assets may be delivered out of the account of the public unit without full payment (no "free deliveries" of investment securities shall be permitted).

15.2(10) If a public unit has engaged an investment advisor or investment manager, the public funds custodial agreement must limit the authority of the investment manager or advisor to authorizing a sale or purchase of an investment on a delivery versus payment basis pursuant to an instruction procedure which is consistent with the requirements of the public funds custodial agreement and the internal control policies of the public unit. The public funds custodial agreement shall not permit an investment manager or investment advisor to deliver, transfer, or move cash or securities to another account, location or entity.

15.2(11) The delivery, transfer or movement of cash or securities held in custody for the public unit (except for trades on a delivery versus payment basis) shall only be made pursuant to instructions given to the custodian by the public unit, its employees or designees, consistent with the internal controls established by the public unit.

15.2(12) The public funds custodial agreement shall specify in satisfactory detail the procedures for instructions to be furnished to the custodian in connection with the sales or purchases of securities and the delivery, transfer or movement of cash or securities held in the custody account. The instruction provisions must be consistent with the internal control policies established by the public unit. These procedures must specify the individual or individuals authorized to issue instructions, the scope of their authority, require current specimen signatures of authorized individuals to be maintained by the custodian and require written instructions to be furnished to the custodian. If oral instructions are permitted, the procedures or protocol for them must be specified in detail and must address verification and confirmation procedures and follow-up written instructions required by the custodian and the public unit.

15.2(13) The public funds custodial agreement shall require the custodian to furnish a monthly report describing in satisfactory detail the inventory of the account and transaction history during the preceding

month and other reports at such times as may be adequate to satisfy the public unit's internal control procedures for reconciliation. In addition, the custodian shall, to the extent not prohibited by law, provide written notice to the public unit within 30 days of the custodian's receipt of an audit by an independent or internal auditor or regulatory authority which indicates that there is a material weakness in the custodian's internal control structure or receipt of a regulatory order or sanction which relates to the type of work performed under the public funds custodial agreement. The custodian shall include in the written notice a detailed description of the comment or sanction and any curative measures which the custodian proposes to take in response thereto.

15.2(14) The public funds custodial agreement shall not provide for the compensation of the custodian based on investment performance.

15.2(15) The custodian shall agree to comply with all applicable federal, state, and local laws and rules when performing within the scope of the public funds custodial agreement.

15.2(16) At a minimum, the custodian shall agree to exercise the standard of care expected of a professional custodian of public funds in holding, maintaining and servicing the public fund's assets and cash and in performing the custodian's duties and obligations under the public funds custodial agreement. [ARC 1464C, IAB 5/14/14, effective 6/18/14; see Delay note at end of chapter; ARC 1709C, IAB 10/29/14, effective 12/3/14]

781—15.3(12B) Optional provisions which public units should consider. The provisions set forth in rule 781—15.2(12B) are minimum requirements and are not exclusive. A public unit should determine whether the services performed by the custodian (except for any custodian hired by the treasurer of state pursuant to Iowa Code section 12C.4) pursuant to the public funds custodial agreement will be performed in the safekeeping department or the trust department and, based upon the advice of its counsel, should also consider other appropriate or more favorable provisions that may customarily be included in a public funds custodial agreement. Such things include, but are not limited to: additional representations and warranties; agreements or covenants pertaining to insurance and fidelity bond of the custodian and its employees; permitted use of subcustodians; adequate description of fees and expenses and billing procedures; the requirement of additional reports, including advices of transactions; conditions to the effectiveness of the public funds custodial agreement regarding deliveries of related documents and certificates; a higher standard of care; the ability of the public unit to terminate the public funds custodial agreement on a short-term basis without cause; and indemnification and default provisions, including recovery of attorneys' fees.

[ARC 1464C, IAB 5/14/14, effective 6/18/14; see Delay note at end of chapter]

781—15.4(12B) Custodial functions. The required provisions contained in rule 15.2(12B) address only custodial functions and do not purport to address discretionary authority pertaining to the investments which shall be set forth in a separate written contract with the investment manager or advisor.

781—15.5(12B) Implementation deadline. Public units shall have until July 1, 2015, to incorporate the required provisions contained in rule 781—15.2(12B) into existing public funds custodial agreements. Any new public funds custodial agreement executed after the effective date of these rules shall contain the provisions of rule 781—15.2(12B).

[ARC 1464C, IAB 5/14/14, effective 6/18/14; see Delay note at end of chapter]

These rules are intended to implement Iowa Code section 12B.10C.

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[Filed ARC 1709C (Notice ARC 1613C, IAB 9/3/14), IAB 10/29/14, effective 12/3/14]

¹ June 18, 2014, effective date of ARC 1464C [15.1 to 15.3, 15.5] delayed 70 days by the Administrative Rules Review Committee at its meeting held June 10, 2014.