

## DEPARTMENT OF REGULATORY AGENCIES

### Division of Banking

## RULES OF THE COLORADO STATE BANKING BOARD PERTAINING TO THE PUBLIC DEPOSIT PROTECTION ACT

### 3 CCR 701-4

*[Editor's Notes follow the text of the rules at the end of this CCR Document.]*

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#### **PDP1 Capital Standards for Eligible Public Depositories [Section 11-10.5-106(2)(b), C.R.S.]**

For purposes of the Public Deposit Protection Act, a bank meeting adequate capital standards will maintain capital ratios as follows:

- A. An eligible public depository must have and maintain a minimum level of total capital to risk-weighted assets in excess of 8 percent. When that ratio falls to 5 percent or below, the eligible public depository shall submit a plan and timeframe for eliminating its public deposits. The plan will be approved as submitted or modified by the Banking Board on a case-by-case basis.
- B. If an eligible public depository's minimum level of total capital to risk-weighted assets is less than 8 percent, but greater than 5 percent, that eligible public depository shall adopt a written capital improvement plan that is acceptable to the Banking Board, and be able to meet the risk-based collateral requirements in Banking Board Rule PDP5.
- C. Higher than minimum capital ratios may be required for an individual eligible public depository when the Banking Board determines that the bank's capital is, or may become, inadequate. For example, higher capital ratios may be appropriate for:
  - 1. A newly chartered bank;
  - 2. A bank receiving special supervisory attention;
  - 3. A bank which has, or is expected to have, losses resulting in capital inadequacy;
  - 4. A bank having a high proportion of off-balance sheet risks, especially standby letters of credit; or exposed to a high degree of asset depreciation or interest rate, funding, transfer, or similar risks; or having a low level of liquid assets in relation to short-term liabilities;
  - 5. A bank that is growing rapidly, either internally or through acquisitions; or
  - 6. A bank that may be adversely affected by the activities or condition of its holding company, affiliate(s), or other persons or institutions including chain banking organizations, with which it has significant business relationships, including concentrations of credit.
- D. An eligible public depository's capital is inadequate if it does not meet the provisions of this Rule. The components of total capital are core (Tier 1) and qualifying supplementary (Tier 2) capital. Specifically, Tier 1 includes:
  - 1. Common stockholders' equity;

2. Noncumulative perpetual preferred stock and any related surplus; and
3. Minority interests in the equity accounts of consolidated subsidiaries.

The components of Tier 2 capital include:

1. Cumulative perpetual, long-term and convertible preferred stock, and any related surplus. The amount of long-term subordinated debt that is eligible to be included as Tier 2 capital is reduced by 20 percent of the original amount of the instrument at the beginning of each of the last five (5) years of the life of the instrument.
2. Perpetual debt and other hybrid debt/equity instruments.
3. Intermediate-term preferred stock and term subordinated debt (to a maximum of 50 percent of Tier 1 capital).
4. Loan loss reserves (to a maximum of 1.25 percent of risk-weighted assets).

Deductions from total capital include:

From Tier 1 capital:

1. Goodwill and other intangibles, with the exception of identified intangibles that satisfy the criteria included in the guidelines.

From total capital:

1. Investments in unconsolidated banking and finance subsidiaries;
2. Reciprocal holdings of capital instruments.

**PDP2 Revocation, Suspension, or Restriction of Designation and Certification as an Eligible Public Depository. [Section 11-10.5-106(3)(b)(I), C.R.S.]**

A bank's designation and certification as an eligible public depository may be revoked, suspended, or placed under restriction for any one of the following:

- A. Failure to maintain adequate capital standards.
- B. Failure to provide information requested by any employee of the Division of Banking for purposes of monitoring the safety of public deposits.
- C. Failure to meet reporting requirements established under the Public Deposit Protection Act or Public Deposit Protection Act Banking Board Rules, Policies, Procedures, or Orders.
- D. Failure to comply with any other provision of the Public Deposit Protection Act, Public Deposit Protection Act Banking Board Rules, Policies, Procedures, or Orders.

**PDP3 List of Approved Eligible Collateral Instruments and Obligations [Section 11-10.5-107(1), C.R.S.]**

For purposes of the Public Deposit Protection Act and these rules, the term "investment grade" is defined as any security assigned a rating of AAA to BBB by Standard & Poor's or Fitch's Investors Services or any security assigned a rating of Aaa to Baa by Moody's Investors Service. The following are approved as eligible collateral:

A.

1. U.S. Treasury Bills, Treasury Notes, and Treasury Bonds.
2. U.S. Treasury STRIPS (Separate Trading of Registered Interest and Principal) with maximum five year maturity.
3. Farm Credit Systemwide Debentures, Medium-Term Notes, and Discount Notes (FCSB), excluding multi-asset class structured notes.
4. Federal Home Loan Bank Debentures (FHLB) and Discount Notes (FHDN), excluding multi-asset class structured notes.
5. Federal National Mortgage Association Debentures (FNSM), Discount Notes (FNDN), and Mortgage-Backed Pass-Through Certificates, excluding multi-asset class structured notes.
6. Federal Home Loan Mortgage Corporation Discount Notes (FMDN) and Mortgage-Backed Participation Certificates (FMPC), excluding multi-asset class structured notes.
7. Government National Mortgage Association Pass-Through Securities (GNMA).
8. Student Loan Marketing Association Bonds (SLBD) and Discount Notes (SLDN), excluding multi-asset class structured notes.
9. Certificates for sale in the secondary market which represent undivided interests in pools composed of United States Department of Agriculture Rural Development and Small Business Administration loans, if either the United States Department of Agriculture Rural Development or Small Business Administration have unconditionally guaranteed payment of all amounts due to be paid to the owner of the certificate, and additionally, portions of loans guaranteed by either the United States Department of Agriculture Rural Development or Small Business Administration, provided that one of those agencies has unconditionally guaranteed payment of all amounts due under the guaranteed portion of the loan. In no event shall any eligible public depository's pledged collateral portfolio consist of more than 50 percent loans.
10. Irrevocable and unconditional standby Letters of Credit issued by a Federal Home Loan Bank, provided that: (1) The Letter of Credit is in the standard format approved by the Division of Banking, (2) the Colorado Division of Banking is designated as the beneficiary of the Letter of Credit; and (3) securities issued by a Federal Home Loan Bank remain investment grade.

B. For purposes of this section B, "public unit" shall have the same meaning as that term is defined in Section 11-10.5-103(13), C.R.S., and "political subdivision" shall have the same meaning as that term is defined in Section 11-10.5-103(10), C.R.S.

1. Obligations of any public unit or any political subdivision in Colorado, including anticipation warrants, general obligations, and obligations the interest and principal of which are secured by deposit in escrow of an amount of obligations of the United States or any agency thereof sufficient to secure payment.
2. Revenue bonds, except industrial development revenue bonds, issued by any public unit or any political subdivision in Colorado, as well as special improvement district bonds issued by any Colorado political subdivision.

3. Obligations of any public unit or political subdivision of another state including anticipation warrants, general obligations, and obligations the interest and principal of which are secured by deposit in escrow of an amount of obligations of the United States or any agency thereof sufficient to secure payment, which obligations shall be readily convertible into cash, and which obligations are rated at least "A" quality by one or more nationally-recognized organizations that regularly rate such obligations.
  4. Revenue bonds of any public unit or political subdivision of another state, except private activity bonds or industrial development revenue bonds, which obligations shall be readily convertible into cash and which obligations are rated at least "AA" quality by one or more nationally-recognized organizations which regularly rate such obligations.
- C. Promissory notes secured by first lien mortgages or deeds of trust on 1-4 family residential real property situated in this state, if such notes are not in default in any respect, are wholly-owned by the eligible public depository, and meet the criteria below
1. Open-end and closed-end loans, including reverse mortgages, secured by real estate as evidenced by mortgages (Federal Housing Authority (FHA), Farmer's Home Administration (FmHA), Veterans Authority (VA), or conventional) or other liens on:
    - (a) Nonfarm property containing 1-to-4 dwelling units (including vacation homes) or more than four dwelling units if each is separated from other units by dividing walls that extend from ground to roof (e.g., row houses, townhouses, or the like);
    - (b) Mobile homes (i) that qualify as the purchase or holding of real property under Section 38-29-101, C.R.S. et seq., and (ii) where the loan to purchase the mobile home is secured by that mobile home as evidenced by a mortgage or other instrument on real property;
    - (c) Individual condominium dwelling units and loans secured by an interest in individual cooperative housing units, even if in a building with five or more dwelling units; or
    - (d) Housekeeping dwellings with commercial units combined where use is primarily residential and where only 1-to-4 family dwellings are involved.
- Home equity lines of credit, loans secured for 1-to-4 family residential property construction and land development purposes, and loans secured by vacant lots in established single-family residential sections or in areas set aside primarily for 1-to-4 family homes may not be pledged as eligible collateral.
- In no event shall any eligible public depository's pledged collateral portfolio consist of more than 50 percent of the above described promissory notes.
- D. Commercial paper rated at least "A1" or "P1" in quality at the time of pledging by Moody's and Standard & Poor's.
  - E. Government National Mortgage Association, Federal National Mortgage Association and Federal Home Loan Mortgage Corporation Collateralized Mortgage Obligations and Real Estate Mortgage Investment Conduits except that interest only and principal only Collateralized Mortgage Obligations and Real Estate Mortgage Investment Conduits shall not be pledged.
  - F. Commercial Mortgage-Backed Securities (CMBS) issued by the Government National Mortgage Association, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation.

G. Surety bonds, provided that:

1. The surety bonds are in the standard format approved by the Colorado Division of Banking;
2. The Colorado Division of Banking is designated as the beneficiary of the surety bond;
3. The claims-paying ability of the issuer of the surety bond is rated, and remains rated in the highest rating category of A.M. Best, Moody's or Standard & Poor's or the highest rating category of another nationally-recognized rating agency acceptable to the Colorado Division of Banking;
4. The issuer of the surety bond is licensed or qualified to do business in Colorado, and unaffiliated with the purchaser of the bond.
  - a. For the purposes of this subsection, Paragraph (G)(4), the definition of an affiliate is the same as the definition of affiliate found at Banking Board Rule CB 101.37(A)(2)(a);
5. No issuer of the surety bonds may provide surety bonds for any one bank in an amount, net of reinsurance issued by companies authorized to sell insurance in Colorado, which exceeds ten percent of the surety bond issuer's capital and surplus as reported to the Colorado Division of Insurance;
6. The issuer and the eligible public depository are required to notify the Colorado Division of Banking in writing 30 days prior to a bond's cancellation; and
7. The issuer is required to send quarterly reports to the Colorado Division of Banking listing those Colorado eligible public depositories which have purchased a surety bond, as well as the insured dollar amounts in effect.

H. Eligible collateral obligations or instruments shall not be in default in any respect.

I. If, in the Colorado Division of Banking's opinion, a previously-pledged instrument is not safe and sound, the instrument shall no longer be deemed eligible collateral.

J. References

1. For more detailed information pertaining to these provisions, please contact the Colorado State Bank Commissioner at 1560 Broadway, Suite 975, Denver, Colorado 80202, (303) 894-7575.

**PDP4 Standards for Establishing Current Market Value of Eligible Collateral [Section 11-10.5-107(1)(c), C.R.S.]**

- A. Market value of the obligations and instruments approved as eligible collateral under Banking Board Rule PDP3(A), items 1, 2, 3, 4, 5, and 7 (except medium term and discount notes), and Banking Board Rule PDP3(F); and all items under Banking Board Rule PDP3(B), shall be the last reported bid or transaction price or, for an inactively traded security, evaluators or other analysts acceptable to the Division of Banking may determine the market value.
- B. Market value of the obligations approved as eligible collateral under Banking Board Rule PDP3(E) shall be 85 percent of the market value determined by evaluators or other analysts acceptable to the Division of Banking.

- C. Market value of the obligations approved as eligible collateral under Banking Board Rule PDP3(C) shall be 50 percent of the current principal balance of the note.
- D. Market value of the obligations approved as eligible collateral under Banking Board Rules PDP3(D) and PDP3(A)(9) shall be 85 percent of the par value of the obligation.
- E. Market value of the medium-term and discount notes approved as eligible collateral under Banking Board Rule PDP3(A), items 3, 4, 5, 6, and 8 shall be 90 percent of the par value of the obligation.
- F. Market value of the letters of credit approved as eligible collateral under Banking Board Rule PDP3(A)(10), and the surety bonds approved under Banking Board Rule PDP3(G) shall be 100 percent of the face value of the letter of credit or surety bond.

**PDP5 Criteria and Procedures for Reducing/Removing Uninsured Public Deposits From a Bank, or Increasing Collateral Requirements, if the Eligible Public Depository Fails to Comply With Minimum Capital Standards or Safety and Soundness Standards. [Sections 11-10.5-107(4)(a)] and [11-10.5-107(4)(b)], C.R.S.**

A. Definitions.

For the purposes of this rule:

- 1. The "composite CAMELS rating" is the numerical rating assigned by a state or federal banking agency at the conclusion of an examination or visitation.
- B. Each eligible public depository (hereinafter "depository") is required to pledge the higher of the amount of eligible collateral required under this paragraph or paragraph C below:
- 1. If the total capital to risk-weighted asset ratio of a depository is equal to or exceeds 8 percent, the depository shall pledge eligible collateral having a market value at all times in excess of 102 percent of the aggregate of uninsured public deposits held by it.
  - 2. If the total capital to risk-weighted asset ratio of a depository is less than 8 percent but greater than, or equal to 7 percent, the depository shall pledge eligible collateral having a market value at all times in excess of 120 percent of the aggregate of uninsured public deposits held by it.
  - 3. If the total capital to risk-weighted asset ratio of a depository is less than 7 percent but greater than or equal to 6 percent, the depository shall pledge eligible collateral having a market value at all times in excess of 140 percent of the aggregate of uninsured public deposits held by it.
  - 4. If the total capital to risk-weighted asset ratio of a depository is less than 6 percent, the depository shall pledge eligible collateral having a market value at all times in excess of 160 percent of the aggregate of uninsured public deposits held by it.
- C. Each depository is required to pledge the higher of the amount of eligible collateral required under this paragraph or paragraph B above:
- 1. Upon receipt of a final report of examination or other notice that a depository has been assigned a composite CAMELS rating of 4, the depository shall pledge collateral having a market value at all times in excess of 120 percent of the aggregate of uninsured public deposits held by it.

2. Upon receipt of a final report of examination or other notice that a depository has been assigned a composite CAMELS rating of 5, the depository shall pledge eligible collateral having a market value at all times in excess of 160 percent of the aggregate of uninsured public deposits held by it.
- D. A depository shall not accept any additional uninsured public deposits or renew any uninsured public deposits beyond the original maturity dates:
1. If the depository's total capital to risk-weighted asset ratio is below 6 percent; or
  2. If the depository has received a final report of examination or other notice that the depository has been assigned a composite CAMELS rating of 5.
- E. A depository shall eliminate all public deposits in an orderly manner, under a plan and a timeframe approved by the Banking Board:
1. If the depository's total capital to risk-weighted asset ratio is equal to or less than 5 percent; or
  2. If the depository has received a final report of examination or other notice that the depository has been assigned a composite CAMELS rating of 5.
- F. Compliance with this rule shall be the responsibility of each depository regardless of the frequency or form of the reports required by the Banking Board.

**PDP6 Requirements for Holding Pledged Collateral in Escrow Under the Public Deposit Protection Act. [Sections 11-10.5-108(1)(a)] and [11-10.5-108(1)(b)], C.R.S.**

Any federal reserve bank, or any branch thereof, any depository trust company, or any bank acting as custodian of eligible collateral, which bank or company has been approved by the Banking Board as an authorized escrow bank, must meet the requirements of Section 11-10.5-108(1)(a), C.R.S. and must agree, in writing, on a form provided by the Division of Banking, to comply with the following:

- A. The Public Deposit Protection Act, and all Banking Board Rules, Policies, Procedures, and Orders;
- B. The Banking Board's safekeeping procedures for the handling and documentation of pledged collateral. (This includes, but is not limited to, issuing Joint Custody Receipts or other documentation required by the Division of Banking to evidence the Banking Board's security interest in the pledged collateral.);
- C. Provide any information requested by the Banking Board, or any employee of the Division of Banking, to verify the safety and adequacy of collateral pledged under the Act;
- D. Allow State Bank Examiners to conduct on-site examinations to determine compliance with the Act and corresponding Banking Board Rules, Policies, Procedures, and Orders; and
- E. Eligible public depositories must apply to the Banking Board for approval to hold collateral securing the same eligible public depository's uninsured public deposits in that depository's trust department. The Banking Board will consider the following, as well as other criteria, in its decision to approve or reject an application:
  1. Total capital to risk-weighted asset ratio of the eligible public depository;
  2. The eligible public depository's overall composite rating, if available;

3. The trust department rating; and
  4. Whether the trust department exercises full-service trust powers.
- F. If an eligible public depository has been approved by the Banking Board to hold eligible collateral pledged to secure the same eligible public depository's uninsured public deposits in its own trust department, the collateral must be held pursuant to the provisions of a formal trust agreement between the eligible public depository and the trust department, acting in its fiduciary capacity.

**PDP7 Reporting Requirements. [Section 11-10.5-109(1), C.R.S.]**

- A. On or before the tenth day of each month, each eligible public depository shall list for the Banking Board on the Monthly Public Depository Liability Report:
1. All public deposit account titles (full, complete titles);
  2. Each public deposit account's dollar amount as of the last business day of the previous month, or as of the day during the previous month on which the bank experienced its highest single day's aggregate total of uninsured public deposits; however, for the report due each July 10 only, each public deposit account's dollar amount must be reported as of June 30, rather than as of the highest uninsured balance day for June.
  3. The dollar amount of each account that is not insured by the FDIC;
  4. The official custodian for each account or the identification number assigned to the account by the Division of Banking pursuant to Section 11-10.5-111(3), C.R.S.
  5. The aggregate total of all public deposits held on the day upon which the above-required listing was based; and
  6. The aggregate market value of the eligible collateral pledged to secure public deposits on the day upon which the above-required listing was based; and
  7. For the report due July 10 only, the bank account number(s) must be included for each public deposit account.
- B. On the same Monthly Public Depository Liability Report, each eligible public depository shall report to the Banking Board the bank's highest single day's aggregate total of uninsured public deposits during the previous month and the date on which the bank experienced that highest single day's aggregate total of uninsured public deposits; or, at its option, an eligible public depository may identify each public deposit account's highest uninsured balance during the previous month and report to the Banking Board the aggregate total of those uninsured amounts.
- C. A sworn, and notarized, statement shall accompany the Monthly Public Depository Liability Report, certifying that the report is true and correct and that at the close of each business day during the previous month the eligible public depository had sufficient collateral pledged to secure all uninsured public deposits in accordance with the collateralization levels required under the Public Deposit Protection Act and Banking Board's Rule PDP5.
- D. On or before the tenth day of each month, each eligible public depository shall report to the Banking Board the following information with respect to each loan pledged by the eligible public depository as eligible collateral:
1. Loan identification number;



2. Name of borrower;
  3. Current principal balance;
  4. Current interest rate;
  5. Maturity date of loan;
  6. Original dollar amount of the loan;
  7. Date last payment was received; and
  8. Date next payment is due.
- E. On or before the tenth day of each month, each eligible public depository shall report to the Banking Board the following information with respect to each mortgage-backed pool security pledged as eligible collateral:
1. Description of security;
  2. Joint Custody Receipt Number;
  3. Current principal balance of mortgage pool; and
  4. CUSIP number of security.
- F. Thirty (30) days following the end of each fiscal quarter, each eligible public depository must submit a copy of its quarterly call report to the Banking Board, in care of the Colorado Division of Banking, unless the eligible public depository has been notified in writing by the Colorado Division of Banking that hard copy submission of this information is no longer required. The Banking Board hereby authorizes the Colorado Division of Banking to establish a method by which to obtain eligible public depository call report information through alternative electronic sources.

**PDP8 A Directors' Examination of Public Deposits. [Section 11-10.5-109(2), C.R.S.]**

- A. Qualifications for Independent Person(s) Assuming Responsibility for Due Care of Directors' Examinations of Public Deposits.

Persons approved by the Banking Board to conduct directors' examinations under C.R.S. 11-103-502(3)(b) are also automatically approved to conduct directors' examinations of public deposits.

- B. Scope of Public Deposit Directors' Examinations.

Directors' examinations of public deposits shall include the following:

1. The bank's total capital to risk-weighted asset ratio.
2. A review of the eligible public depository's trial balance reports or other records identifying all deposit accounts held by the bank to discover any public deposit accounts not previously identified as "public" or reported to the Division of Banking on the Monthly Public Depository Liability Report. This procedure is not required if the eligible public depository's most recent safety and soundness CAMEL rating was 1 or 2.

3. Verification that each piece of pledged collateral is of a type approved by the Banking Board as eligible collateral. Refer to Banking Board Rule PDP3 for eligible collateral list. This procedure is not required if the eligible public depository's most recent safety and soundness CAMEL rating was 1 or 2.
4. Verification that the eligible public depository is reporting monthly to the Division of Banking the current principal balance of each real estate loan, mortgage-backed pool security, and collateralized mortgage obligation pledged as collateral under the Public Deposit Protection Act. This procedure is not required if the eligible public depository's most recent safety and soundness CAMEL rating was 1 or 2.
5. Review of the bank's procedures and workpapers for calculating uninsured public deposits and verifying that sufficient collateral is pledged to protect those uninsured deposits at the minimum required level under Banking Board Rules PDP4 and PDP5. Acknowledgment that the bank has been pledging sufficient amounts of collateral.
6. Review of all collateral pledged under the Public Deposit Protection Act to identify any piece of pledged collateral that has been reported to be in jeopardy of default or any piece of pledged collateral that has been adversely classified by any regulatory agency examiner.

C. Report to be Filed With the Colorado Division of Banking.

A copy of a report addressing in detail the items under Banking Board Rule PDP8A, Paragraph (B) must be filed with the Colorado Division of Banking within one hundred fifty (150) days following the date of the directors' examination of public deposits.

**PDP9 Assessments and Fees. [Sections 11-10.5-106(3)(a)(III)]; [11-10.5-109(4); and 11-10.5-112(2), C.R.S.]**

A. Assessments

1. In order to cover the expenses, net of fee income of the Division of Banking for the supervision of eligible public depositories, each eligible public depository shall be assessed annually, as of June 30.
2. On June 30 of each year each eligible public depository shall be subject to the full assessment without proration for any reason.
3. Assessments for all eligible public depositories shall be calculated according to the proportion of aggregate public deposits that each depository holds in relation to the total of all aggregate public deposits held by all eligible public depositories for each annual period for which they were eligible public depositories. Assessments may also be based on other factors as determined by the Banking Board, consistently applied.

B. Fees

1. The Banking Board shall set fees annually by publishing a schedule of fees for services as of July 1 of each year.
2. Such schedule shall list all services performed that are subject to a fee and the fee to be charged. In addition, the fee schedule shall list fees set by statute, if any.

C. Payment of Assessments and Fees.

1. Assessments and fees shall be remitted to the "Division of Banking" in the form of a cashier's check or similar instrument payable to the "Colorado Division of Banking."
2. The assessment and any fee relating to examinations shall be paid within twenty (20) days after a statement of the amount thereof shall have been received by the eligible public depository.
3. All other fees shall be paid at the time the service is rendered. Service relating to statutory application or notice is deemed to be rendered at the time of filing application or notice.

**PDP11 Qualifications for Certification as an Eligible Public Depository [Section 11-10.5-106(2), C.R.S.]**

Only banks meeting all of the following criteria may be certified to hold public deposits:

- A. The bank must be organized or chartered under Title 11, Articles 101 to 108, under the banking laws of any other state, or under Title 12, Chapter 2 of the United States Code.
- B. The bank must either be headquartered in Colorado, or have a branch physically located in Colorado.
- C. The deposits of the bank must be insured or guaranteed by the Federal Deposit Insurance Corporation.
- D. The bank must be in compliance with the capital standards established by the Banking Board for eligible public depositories.
- E. The bank must agree, in writing, to abide by the Colorado Public Deposit Protection Act, all Rules, procedures, regulatory directives, examination requirements, and any other criteria established by the Banking Board.

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**Editor's Notes**

**History**

Rule PDP5 eff. 12/30/2009.

Rule PDP3 eff. 04/14/2013.

Rules PDP3.C, PDP3.G, PDP3.K emer. rules eff. 03/20/2014.

Rule PDP4 emer. rule eff. 04/17/2014.

Rule PDP3 eff. 06/30/2014.

Rule PDP4 eff. 08/15/2014.