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TITLE 3. BANKING

CHAPTER 34. GOVERNMENTAL UNIT DEPOSIT PROTECTION

N.J.A.C. 3:34 (2013)

CHAPTER 34

GOVERNMENTAL UNIT DEPOSIT PROTECTION

SUBCHAPTER 1. GOVERNMENTAL UNIT DEPOSIT PROTECTION

**§ 3:34-1.1 Purpose and scope**

(a) This subchapter implements N.J.S.A. 17:9-41 et seq. regarding collateral requirements for depositories that accept the deposits of local New Jersey governmental unit funds.

(b) This subchapter shall apply to all depositories that accept the deposits of local New Jersey governmental unit funds.

**§ 3:34-1.2 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" or "GUDPA" means the Governmental Unit Deposit Protection Act, N.J.S.A. 17:9-41 et seq.

"Adequately capitalized" means, with respect to a public depository, "adequately capitalized" as the term is defined in N.J.S.A. 17:9-41.

"Association" means any State or Federally chartered savings and loan association.

"Call report" means the quarterly report on a depository's overall condition made to the appropriate Federal banking agency as defined by subsections (q) and (r) of section 3 of the Federal Deposit Insurance Act, Pub. L. 81-797 (12 U.S.C. § 1813(q) and (r)) or to the National Credit Union Administration.

"Capital funds" means:

1. In the case of a State bank or national bank or capital stock savings bank, the aggregate of the capital stock, surplus and undivided profits of the bank or savings bank;
2. In the case of a mutual savings bank, the aggregate of the capital deposits, if any, and the surplus of the savings bank;
3. In the case of an association, the aggregate of all reserves required by any law or regulation, and the undivided profits, if any, of the association; and
4. In the case of a credit union, the aggregate of all reserves required by any law or regulation, and the capital deposits of the credit union.

"Commissioner" means the Commissioner of the New Jersey Department of Banking and Insurance.

"Credit union" means a credit union as defined in N.J.S.A. 17:13-80.

"Critically undercapitalized" means, with respect to a public depository, "critically undercapitalized" as the term is defined in N.J.S.A. 17:9-41.

"Custodial depository or custodian" means the depositories specified in N.J.S.A. 17:9-44c.

"Department" means the New Jersey Department of Banking and Insurance.

"Eligible collateral" means:

1. Obligations of any of the following:
  - i. The United States;
  - ii. Any agency or instrumentality of the United States, including, but not limited to, the Student Loan Marketing Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration and the Small Business Administration;
  - iii. The State of New Jersey or any of its political subdivisions; or
  - iv. Any other governmental unit;
2. Obligations guaranteed or insured by any of the following, to the extent of that insurance or guaranty:
  - i. The United States;

- ii. Any agency or instrumentality of the United States, including, but not limited to, the Student Loan Marketing Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration and the Small Business Administration; or
  - iii. The State of New Jersey or any of its political subdivisions;
3. Obligations now or hereafter authorized by law as security for public deposits;
  4. Obligations in which the State, political subdivisions of the State, their officers, boards, commissions, departments and agencies may invest pursuant to an express authorization under any law authorizing the issuance of those obligations;
  5. Obligations, letters of credit, or other securities or evidence of indebtedness constituting the direct and general obligation of a Federal Home Loan Bank or Federal Reserve Bank; or
  6. Any other obligations as may be approved by the Commissioner by regulation or by specific approval.

"Governmental unit" means any county, municipality, school district or any public body corporate and politic created or established under any law of this State by or on behalf of any one or more counties or municipalities, or any board, commission, department or agency of any of the foregoing having custody of funds.

"Public depository" means a State or Federally chartered bank, savings bank or an association located in this State or a State or Federally chartered bank, savings bank or an association located in another state with a branch office in this State, the deposits of which are insured by the Federal Deposit Insurance Corporation, or a State or Federally chartered credit union located in this State, or a State or Federally chartered credit union located in another state with a branch office in this State, the deposits of which are insured by the National Credit Union Share Insurance Fund administered by the National Credit Union Administration, and which receives or holds public funds on deposit.

"Public funds" means the funds of any governmental unit, but does not include deposits held by the State of New Jersey Cash Management Fund.

"Significantly undercapitalized" means, with respect to a public depository, "significantly undercapitalized" as the term is defined in N.J.S.A. 17:9-41.

"Undercapitalized" means, with respect to a public depository, "undercapitalized" as the term is defined in N.J.S.A. 17:9-41.

"Uninsured" means not insured by the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Share Insurance Fund administered by the National Credit Union Administration, or by any other agency of the United States which insures deposits made in public depositories.

"Valuation date" means March 31, June 30, September 30, and December 31.

"Well capitalized" means, with respect to a public depository, "well capitalized" as the term is defined in N.J.S.A. 17:9-41.

### **§ 3:34-1.3 General requirement**

No deposit from a governmental unit may be received and held by any public depository unless the public depository secures such deposit in accordance with the Governmental Unit Deposit Protection Act, N.J.S.A. 17:9-41 et seq., and this subchapter.

### **§ 3:34-1.4 Required reports**

(a) A public depository shall file electronically with the Department a report as set out on the Department's website at [www.state.nj.us/dobi/index.html](http://www.state.nj.us/dobi/index.html). The report is due on a quarterly basis and is to be filed on or before the due date for the filing of a call report. The report shall include the following information:

1. The name and address of the reporting institution;
2. The date of report filing and the valuation date of the report;
3. The name and title of the designated GUDPA officer or contact person and that person's telephone number and e-mail address;
4. A secondary contact name and title, with telephone number and e-mail address
5. The total capital funds;
6. New Jersey capital funds allocated pursuant to N.J.A.C. 3:34-1.6;
7. Seventy five percent of New Jersey capital funds;
8. The total average balance of New Jersey public funds during the three-month period ending prior to the current valuation date;
9. Whether a daily or four-day average was used;
10. The New Jersey public funds covered by insurance;
11. The average New Jersey public funds on deposit in excess of insurance;
12. The total average balance of New Jersey public funds during the 15-day period preceding the current valuation date;
13. The collateral requirement, and the total market value of collateral pledged;

14. A listing of collateral pledged; and, for each security, the par value, name and description, the Committee on Uniform Security Identification Procedures (CUSIP) number, the rate, the maturity date, the market value, and the collateral location;
15. The gross New Jersey public funds on deposit as of the valuation date; and
16. As of the valuation date, the depository's:
  - i. Capital category;
  - ii. Tier 1 leverage capital/average total assets;
  - iii. Tier 1 risk-based capital/risk-weighted assets; and
  - iv. Total risk-based capital/risk-weighted assets.

(b) Each public depository required to pledge collateral shall provide an electronic listing of such collateral with each report. Such listing shall be in a form prescribed by the Commissioner and made available on the Department's website.

(c) Failure to file complete and timely reports will result in the depository being removed from the approved list referenced in N.J.A.C. 3:34-1.8.

### **§ 3:34-1.5 Fees**

(a) Each public depository, unless exempt, shall pay an annual fee for every fiscal year. The fee will be based on the average daily public funds on deposit for the three-month reporting period ending on the June 30 valuation date of the prior fiscal year.

(b) A public depository paying dedicated funding assessments pursuant to N.J.A.C. 3:5 shall be exempt from paying the annual fee set forth in this section.

(c) Payment shall be made by electronic means as directed by the Commissioner on the Department's website at [www.state.nj.us/dobi/index.html](http://www.state.nj.us/dobi/index.html) at the time of the filing in accordance with (a) above and (d) and (e) below.

(d) The amount of the annual fee shall be:

1. \$ 500.00 for a public depository with no uninsured public funds;
2. \$ 1,000 for a public depository with less than \$ 50,000,000 in uninsured public funds;
3. \$ 2,000 for a public depository with \$ 50,000,000 or more, but less than \$ 100,000,000 in uninsured public funds;
4. \$ 3,000 for a public depository with \$ 100,000,000 or more, but less than \$ 200,000,000 in uninsured public funds;
5. \$ 4,000 for a public depository with \$ 200,000,000 or more, but less than \$ 300,000,000 in uninsured public funds;

6. \$ 5,000 for a public depository with \$ 300,000,000 or more, but less than \$ 400,000,000 in uninsured public funds; or
7. \$ 6,000 for a public depository with \$ 400,000,000 or more in uninsured public funds.

(e) A proportional amount of the annual fee shall be charged to a public depository that accepts its first public funds deposit in a fiscal year after July 1, based on the first report filed during a fiscal year covering a full three-month period ending on a valuation date. The amount of the proportional fee will be determined by the amount of the public funds held during the first full three-month period and in which quarter of the fiscal year the public depository commenced to accept public funds for deposit, as specified in the first report filed as referenced above. For example, if a public depository first accepts public funds in December, the first full three-month period ending on a valuation date during which it would hold such funds would end on the succeeding March 31. If the average daily amount of public funds on deposit during that three-month period was \$ 50,000,000 or more but less than \$ 100,000,000, the fee payable by that public depository would be \$ 1,500, determined by dividing the \$ 2,000 full year fee for that amount by .75, since the fee would be payable for the second, third and fourth quarters of that fiscal year, which were the quarters, or parts thereof, that the public depository was authorized to hold public funds. A public depository that had previously been charged an annual fee or a proportional amount of an annual fee as set forth herein, but which subsequently ceased to hold any public funds and was not charged any fee for the fiscal year immediately preceding the fiscal year in which it renews its acceptance of public funds, shall be charged a proportional fee amount as set forth in this subsection based upon its renewed acceptance of such funds.

(f) All fees are non-refundable.

(g) Failure to timely pay fees will result in the depository being removed from the approved list referenced in N.J.A.C. 3:34-1.8.

### **§ 3:34-1.6 Collateral obligations**

(a) Every public depository having uninsured public funds on deposit shall maintain, in addition to collateral noted in (b) and (c) below, as security for such deposits, eligible collateral having a market value at least equal to:

1. Five percent of the uninsured public funds on deposit, if the public depository is well capitalized;
2. 50 percent of the uninsured public funds on deposit, if the public depository is adequately capitalized;
3. 75 percent of the uninsured public funds on deposit, if the public depository is undercapitalized;

4. 100 percent of the uninsured public funds on deposit, if the public depository is significantly undercapitalized; or
5. 150 percent of the uninsured public funds on deposit, if the public depository is critically undercapitalized.

(b) A public depository which receives and holds on deposit for any period exceeding 15 calendar days public funds of a governmental unit or units which in the aggregate exceed 75 percent of the capital funds of the public depository as reported on the most recent valuation date shall report such excess and describe the eligible collateral pledged to secure said excess. Such collateral shall have a market value at least equal to the amount of such excess and shall be in addition to the security required by (a) above and as reported in the most recent report filed with the Department. For purposes of this subsection, the capital funds of a public depository located in New Jersey which has branches located outside New Jersey shall be its total capital funds multiplied by the percentage of deposits located in New Jersey to total deposits of the depository.

(c) Every public depository having uninsured public funds on deposit in excess of \$ 200,000,000, not collateralized under (b) above, shall maintain, as security for such excess uninsured public funds, eligible collateral having a market value at least equal to 100 percent of the average daily balance of those collected, uninsured public funds on deposit in excess of \$ 200,000,000 during the three-month period ending on the immediately preceding valuation date or, at the election of the depository, at least equal to 100 percent of the average balance of those collected, uninsured public funds on deposit in excess of \$ 200,000,000 on the first, eighth, 15th and 22nd days of each month in the three-month period ending on the immediately preceding valuation date.

(d) The amount of eligible collateral in relation to the amount of uninsured public funds on deposit necessary for a public depository to meet the collateral requirements shall be measured as:

1. The percentage, set forth under (a) above, of the average daily balance of collected, uninsured public funds on deposit during the three-month period ending on the immediately preceding valuation date; or
2. At the election of the depository, the percentage, set forth under (a) above, of the average balance of collected, uninsured public funds on deposit on the first, eighth, 15th and 22nd days of each month in the three-month period ending on the immediately preceding valuation date.

### **§ 3:34-1.7 Eligible collateral**

(a) All eligible collateral used to secure public funds on deposit in a public depository shall be in a form that is "readily marketable" and "liquid." The determination of "readily marketable" and

"liquid" shall be made by the Commissioner based upon the existence of a substantial public market for the collateral and a high probability that the Commissioner could convert the collateral into cash promptly through existing available channels.

(b) In addition to obligations otherwise authorized in N.J.S.A. 17:9-41, eligible collateral shall also include irrevocable stand-by letters of credit issued by a Federal Home Loan Bank. The Commissioner shall review and approve the form of all such letters of credit proposed by a public depository as eligible collateral under this section. Further, the original letter of credit shall be held by the Commissioner.

### **§ 3:34-1.8 Notice of approval of an eligible public depository**

The Department will maintain a listing on its website at [www.state.nj.us/dobi/index.html](http://www.state.nj.us/dobi/index.html) of all depositories it has approved as public depositories.

### **§ 3:34-1.9 Scope of terms surplus, undivided profits, reserves, and capital deposits**

(a) As included within the definition of capital funds in N.J.S.A. 17:9-41 and N.J.A.C. 3:34-1.2:

1. The terms "surplus" and "undivided profits" shall, in the case of a State bank or national bank, include any reserve for contingency, reserve for securities and reserve for bad debts as computed for Federal income tax purposes, but shall:
  - i. Exclude any specifically allocated reserves or reserves for known specific charges; and
  - ii. Be reduced by the booked value of any intangible assets set up on the balance sheet which represent nonmaterial values over and above physical assets, such as goodwill, deferred losses and intangible assets.
  
2. The term "surplus" shall, in the case of a savings bank, include undivided profits, any reserve for contingency, reserve for securities and reserve for bad debts as computed for Federal income tax purposes but shall:
  - i. Exclude any specifically allocated reserves or reserves for known specific charges; and
  - ii. Be reduced by the booked value of any intangible assets set up on the balance sheet which represent nonmaterial values over and above physical assets, such as goodwill, deferred losses and intangible assets.

3. The term "undivided profits" shall, in the case of an association, include any reserve for contingency required by any law or regulation and any reserve for bad debts as computed for Federal income tax purposes, but shall:
  - i. Exclude any specifically allocated reserves or reserves for known specific charges; and
  - ii. Be reduced by the booked value of any intangible assets set up on the balance sheet which represent nonmaterial values over and above physical assets, such as goodwill, deferred losses and intangible assets.
  
4. The terms "reserves" and "capital deposits" shall, in the case of a credit union, include any reserve for contingency required by any law or regulation and any reserve for bad debts as computed for Federal income tax purposes, but shall:
  - i. Exclude any specifically allocated reserves or reserves for known specific charges; and
  - ii. Be reduced by the booked value of any intangible assets referenced on the balance sheet which represent nonmaterial values over and above physical assets, such as goodwill, deferred losses, and intangible assets.

### **§ 3:34-1.10 Substitution of collateral**

Public depositories shall have the right to make substitutions of eligible collateral between valuation dates without notification to and approval by the Commissioner; provided that any substituted collateral shall have a market value as of the date of substitution that is at least equal to the market value of the collateral so replaced as reported on the last valuation date. Any withdrawal of pledged collateral without replacement as aforesaid requires the prior approval of the Commissioner. A written request to the Commissioner requesting such withdrawal of collateral shall indicate the collateral to be withdrawn and the reason or reasons for such withdrawal. The Commissioner shall transmit to the public depository his or her approval or disapproval of such withdrawal in writing.

### **§ 3:34-1.11 Agreement between custodial depositories and Commissioner**

(a) A public depository shall not deposit collateral in a custodial depository that is a parent or subsidiary of the public depository, or is otherwise related to the public depository.

(b) A custodial depository shall be required to have a written agreement with the Commissioner authorizing such depository to hold securities as collateral for public funds under the terms and conditions enumerated therein.

(c) Should a public depository fail to meet its minimum regulatory capital requirements as established by the appropriate supervising Federal agency, or meet the criteria set forth in N.J.S.A. 17:16J-2(a), or for reasons grounded in other safety and soundness concerns, the Commissioner may:

1. Limit the authority of the public depository by prohibiting the public depository from accepting public deposits not insured by a Federal agency; and/or
2. Require that the public depository pledge only readily marketable investment grade securities, and pledge such securities to the extent of 120 percent of the amount of public funds on deposit not insured by the appropriate Federal insurance fund.

#### **§ 3:34-1.12 Agreement or resolution; public depository and custodial depository**

Each public depository shall be required to have a written agreement with a custodial depository. Said agreement shall indicate that the collateral pledged is to be held subject to the order of the Commissioner or his or her authorized deputy and is held as security for public funds as required under the Act.

#### **§ 3:34-1.13 Security; State and other public deposits**

The securing of public deposits as required under the Act shall not preclude any public depository from securing State or other public deposits which are otherwise required to be secured by law. The deposits which are otherwise required to be secured shall be excluded from the computation of the average balance of public funds as required in this subchapter.

#### **§ 3:34-1.14 Records maintained by Commissioner; eligibility**

The Commissioner shall maintain such records as he or she shall deem necessary in order to determine which public depositories have complied with the Act. After receipt of each quarterly report, the Commissioner shall post a listing of public depositories eligible to act as a depository for public funds on the Department's website at [www.state.nj.us/dobi/index.html](http://www.state.nj.us/dobi/index.html).

#### **§ 3:34-1.15 Requirements for first time public depositories**

(a) Before initially accepting public funds, a depository shall submit a complete application to the Department for approval as a public depository on a form found on the Department's website at [www.state.nj.us/dobi/index.html](http://www.state.nj.us/dobi/index.html). The information to be provided on the form shall include the depository's identifying information, chartering agency, a certified copy of board resolution(s) authorizing participation in GUDPA and designating the depository's GUDPA custodian, total capital funds, and the name of the approved custodian. Upon receipt of a complete application, the Commissioner shall publish notice of the submission of the application on the Department's website at [www.njdobi.org](http://www.njdobi.org). After review of the application, the Commissioner shall approve the application within 30 days of the Department's acceptance of all required materials and confirmation of compliance with all requirements set forth in this chapter and shall prescribe the amount of eligible collateral required to be maintained.

(b) Upon the Commissioner approving the application and prescribing the required collateral amount and the collateral being properly pledged with the custodian and proof of that being provided by the custodian to the Department, the approved status of the public depository will be published on the Department's website at [www.njdobi.org](http://www.njdobi.org). After approval by the Department of the first valuation report filed by the public depository in accordance with N.J.A.C. 3:34-1.4, the public depository will be added to the electronic list of approved public depositories referenced in N.J.A.C. 3:34-1.8.

(c) After a public depository has held public funds for an entire three-month period and filed a valuation report for the full three-month period, it shall hold eligible collateral in the amount required by N.J.A.C. 3:34-1.6 unless otherwise ordered by the Commissioner. When deciding whether to order a public depository to hold eligible collateral in an amount higher than required by N.J.A.C. 3:34-1.6, the Commissioner shall consider factors related to the level of risk to which the public funds held by the public depository are exposed, including, but not limited to, the factors listed below:

1. The tangible equity capital of a non-credit union public depository or net worth of a credit union public depository;
2. The level of concentrations reflected in the public depository's financial statements;
3. The single borrower lending limit to which the public depository is subject pursuant to applicable State or Federal law or regulations; and
4. Such other factors as the Commissioner may deem relevant to an evaluation of the level of risk to which the public funds held by the public depository may be exposed.

### **§ 3:34-1.16 Financial education program supported by credit union public depositories**

(a) If the average daily balance of the public funds on deposit at the credit union for the preceding year is in excess of \$ 2,000,000, the chief financial officer, or the senior official in the

credit union with responsibility for performing the functions of a chief financial officer, of a credit union that qualifies as a public depository shall transmit to the Department with each fourth calendar quarter GUDPA report a written certification, in a form specified by the Commissioner and posted on the Department's website, that the credit union has forwarded to the nonprofit corporation designated by the Department of Education in accordance with N.J.S.A. 17:9-43.2 a sum equal to the average daily balance, multiplied by the appropriate factor, as determined in accordance with the following schedule:

1. An average daily balance in excess of \$ 2 million but less than \$ 25 million: multiply by a factor of .0005;
2. An average daily balance of \$ 25 million or over but less than \$ 50 million: multiply by a factor of .00075;
3. An average daily balance of \$ 50 million or over: multiply by a factor of .0010. However, in no event, shall a credit union be required to forward a sum in excess of \$ 100,000 in any one year.

(b) The certification shall contain proof of payment to the designated nonprofit corporation in the form of a copy of a cancelled check or other payment instrument or evidence of a successful wire transfer.