



NOTICES OF FINAL RULEMAKING

This section of the Arizona Administrative Register contains Notices of Final Rulemaking. Final rules have been through the regular rulemaking process as defined in the Administrative Procedures Act. These rules were either approved by the Governor's Regulatory Review Council or the Attorney General's Office. Certificates of Approval are on file with the Office.

The final published notice includes a preamble and

text of the rules as filed by the agency. Economic Impact Statements are not published.

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the final rules should be addressed to the agency that promulgated them. Refer to Item #5 to contact the person charged with the rulemaking. The codified version of these rules will be published in the Arizona Administrative Code.

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 14. STATEWIDE COLLATERAL POOL

[R15-04]

PREAMBLE

- 1. Articles, Parts, and Sections Affected (as applicable) Rulemaking Action
Article 1 New Article
R2-14-101 New Section
R2-14-102 New Section
R2-14-103 New Section
R2-14-104 New Section
R2-14-105 New Section
R2-14-106 New Section
R2-14-107 New Section
R2-14-108 New Section
R2-14-109 New Section
2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):
Authorizing statute: A.R.S. § 35-1202
Implementing statute: A.R.S. §§ 35-1201 through 35-1212
3. The effective date for the rules:
April 4, 2015
4. Citation to all related notices published in the Register to include the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:
Notice of Rulemaking Docket Opening: 20 A.A.R. 2808, October 17, 2014
Notice of Proposed Rulemaking: 20 A.A.R. 2795, October 17, 2014
5. The agency's contact person who can answer questions about the rulemaking:
Name: Mark Swenson, Deputy Treasurer
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6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:
Under Laws 2013, Chapter 157, the legislature authorized a statewide collateral pool for public deposits and created the office of Statewide Collateral Pool Administrator in the State Treasurer's office to implement and monitor the statewide collateral pool. The statewide collateral pool provides an efficient, cost effective, and safe way for depository institutions to collateralize public monies. The depository institutions are able to centralize processing and



managing the pledging and maintaining of collateral through the pool rather than with each depositing public entity. The depository institutions also have only to report to the Administrator rather than to each depositing public entity. Depositing public entities benefit from having the Administrator monitor collateral of public monies.

The statutes authorizing the statewide collateral pool require the Administrator to establish policies and procedures necessary to implement the pool. The Administrator has determined certain policies and procedures should be placed in rule. This rulemaking places the policies and procedures in rule.

This rulemaking is exempt from the rulemaking moratorium contained in Executive Order 2015-01 under paragraph (3)(a) of the Order. Under A.R.S. § 41-1057(B), the State Treasurer is electing to follow the procedures in A.R.S. Title 41, Chapter 6, Article 5 rather than those in A.R.S. § 41-1044.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Administrator does not need to review or rely on a study for its evaluation of or justification for any rule in this rulemaking because the rules simply implement statutory requirements.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. A summary of the economic, small business, and consumer impact:

This rulemaking will have minimal economic impact on both eligible depositories and depositors of public monies because it simply implements statutory requirements. It is statute that has the economic impact. Both eligible depositories and depositors of public monies will benefit from creation of the statewide collateral pool to protect public monies while creating efficiencies in the pledging and monitoring of collateral.

10. A description of any changes between the proposed rulemaking, including supplemental notices, and the final rulemaking:

Only minor changes were made between the proposed and final rulemaking. The changes made in response to public comment are addressed in detail in item 11. None of the changes are substantial under the standards specified at A.R.S. § 41-1025(B).

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to comments:

An oral proceeding was held on November 18, 2014. The only comments submitted were by JPMorgan Chase Bank.

COMMENT	ANALYSIS	RESPONSE
R2-14-101(B)(1): Clarify the definition of "collateral pool" regarding alternate types of collateral instruments by referencing statute.	Referencing statute provides additional clarity.	The definition of "collateral pool" was amended to include the statutory reference.
R4-14-103(B): Add a reference to statute to clarify the requirements for a letter of credit to serve as eligible collateral.	Referencing statute provides additional clarity.	Reference to the statutory requirements for a letter of credit to be used as collateral was added to the subsection.
R4-14-103(D): Amend to reflect HUD policy that collateral is pledged to the Housing Authority rather than directly to HUD. Provide a description of how the HUD-related monies are to be reported to the Administrator.	The suggested amendment provides needed clarity. The monies are to be reported in the daily report required under R2-14-105(B). A separate report is not acceptable although the HUD-related monies may be reported as a separate line item. HUD-related monies are currently being reported and there have been no inaccuracies.	The first sentence of the subsection was amended to reflect current HUD policy. No change
R2-14-103(E)(1): Provide a description of the source of valuation that is to be provided when a security is pledged as collateral. Is a one-time notification of the source of the valuation acceptable?	The depository has only to tell the Administrator the source of valuation. It can be the usual pricing vendor used by the depository. One-time notification is sufficient if there is no change. If the pricing vendor changes, notice is required.	No change



R2-14-103(E)(2): Amend to clarify that the qualified escrow agent will retain cash proceeds only until substitute collateral is pledged.	The suggested clarification is useful.	The subsection was amended as suggested and to make it consistent with the lead in R2-14-103(E).
R2-14-104(A): Please define “late day.” Move the phrase “if needed.” Clarify the manner in which public depositors are to notify the Administrator of late-day deposits and the consequences of failing to provide notice.	A parenthetical definition will clarify the term. Ok Depositors can notify the Administrator by telephone or e-mail. The Administrator has no authority to enforce the notice requirement, which is contingent on the depositor being able to anticipate a late-day deposit. There are no remedies for an eligible depository if a late-day deposit causes the depository to have insufficient collateral. This problem results from requirements of the Federal Reserve and the fact that Arizona does not operate on EST.	The requested definition was added to the subsection. Suggested change was made. No change
R2-14-104(B): Clarify that when a letter of credit is used as collateral, reducing the face amount of the credit is equivalent to releasing excess collateral.	The clarification is valuable.	The suggested amendment was made to the subsection.
R2-14-104(C): Amend the subsection to refer to pledged rather than deposited eligible collateral.	The clarification is valuable.	The suggested amendment was made to the subsection.
R2-14-105(A)(3): Clarify the meaning of “immediately.”	The commenter suggested that “promptly” be substituted for “immediately.” This is acceptable to the Administrator.	The word “promptly” was substituted for “immediately” in the subsection.
R2-14-105(B) and (C): Clarify that the Administrator may have approved a report form or format other than that posted on the Treasurer’s web site.	The clarification is valuable.	The suggested amendment was made to both subsections.
R2-14-105(E): Combine the two subsections and reference all applicable Sections of 12 U.S.C.	Very good suggestion.	The suggested change was made.
R2-14-106(C): Replace the phrase “comply timely” with the requirement that notice be provided by 3:00 EST of the same day.	The suggestion provides clarity.	The subsection was amended to have the 3:00 p.m. EST deadline applicable to compliance with both subsections (A) and (B).
R2-14-106(C)(1): Under A.R.S. § 35-1211, the penalty for failure to pledge additional collateral is \$250 per day and the penalty for failure to provide a requested report is \$100 per day. This subsection needs to be amended to reflect this difference.	The statutory distinction in penalties is accurate.	The subsection was amended to have a different penalty amount for failure to pledge additional collateral and failure to provide a requested report.
R2-14-106(D): Under the collateral pool, eligible depositories no longer send collateral statements to public depositors. Does the term “statement” refer to an account statement? Amend this subsection to reflect that the forwarded monthly report will be deemed correct unless the Administrator is notified of discrepancies.	The commenter is correct that the term “statement” refers to an account statement. The clarification is valuable.	The word “account” was inserted to modify “statement.” The suggested provision regarding accuracy of monthly reports was added.



R2-14-107: How is “fair and equitable calculated?”	The annual amount of expenses incurred to enforce and administer the collateral pool is pro-rated based on the proportion of uninsured public monies on deposit with a depository.	No change
How is the additional assessment calculated and what circumstances trigger an additional assessment?	The additional assessment is the actual amount incurred when actions of a specific depository cause the collateral pool to incur expenses that result solely from the actions of the depository.	No change
What is the statutory authority for the additional assessment?	Under A.R.S. § 32-1212, fees assessed by the Administrator are to be fair and equitable. It is neither fair nor equitable to expect all depositories to share expenses that result solely from the actions of a specific depository.	No change
R2-14-108(A)(1): Clarify that amounts returned are determined in accordance with the terms of the depository agreement.	The clarification is valuable.	The subsection was amended as suggested.
R2-14-108(A)(3): Clarify that an eligible depository is in default if a receiver has been appointed rather than if it is subject to appointment of a receiver.	The clarification is valuable.	The subsection was amended as suggested.
R2-14-108(D): Add a third subsection dealing with the circumstance of default not being due to the insolvency or receivership of the depository.	The clarification is valuable.	The requested provision was included in an additional subsection.
R2-14-109(A): Amend the lead sentence to indicate that the penalties assessed will not exceed the amounts specified in statute.	The clarification is valuable.	The subsection was amended as suggested.
R2-14-109(B): What contact information will be used when notice is sent by certified mail?	The Administrator will send certified mail to the contact individual identified under R2-14-105(A)(1).	No change
It is useful when the Administrator sends notices by e-mail to multiple contacts.	The Administrator will continue to do this for notices other than those sent by certified mail.	No change

12. All agencies shall list any other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

None of the rules requires a permit.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

There are federal laws applicable to banks and savings institutions. Eligible depositories will have to comply with the federal laws. However, the federal laws are not applicable to operation of the statewide collateral pool.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

No materials are incorporated by reference.

14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

None of the rules were previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:



TITLE 2. ADMINISTRATION

CHAPTER 14. STATEWIDE COLLATERAL POOL

ARTICLE 1. STATEWIDE COLLATERAL POOL

Section

R2-14-101. Definitions

R2-14-102. Participation Mandatory

R2-14-103. Collateral Required

R2-14-104. Increasing, Releasing, and Substituting Eligible Collateral

R2-14-105. Reports Required

R2-14-106. Use of Reports

R2-14-107. Fee Assessment

R2-14-108. Payment of Losses

R2-14-109. Civil Penalty for Noncompliance; Hearing

ARTICLE 1. STATEWIDE COLLATERAL POOL

R2-14-101. Definitions

- A.** The definitions in A.R.S. § 35-1201 apply to this Chapter.
- B.** Additionally, in this Chapter:
 - 1. “Collateral pool” means the method of securing repayment of uninsured balances of public deposits made with an eligible depository through the pledge of eligible investments specified under A.R.S. § 35-323.
 - 2. “CUSIP” means Committee on Uniform Security Identification Procedures and refers to a nine character alphanumeric code that uniquely identifies a financial security.
 - 3. “EST” means Eastern Standard Time.
 - 4. “FDIC” means the Federal Deposit Insurance Corporation.
 - 5. “Treasurer” means the Office of the Arizona State Treasurer.
 - 6. “Uninsured” means public monies deposited with an eligible depository that exceed the amount insured by an instrumentality of the United States.

R2-14-102. Participation Mandatory

- A.** Public depositors.
 - 1. Except as provided under A.R.S. § 35-1204(B), all public depositors shall place deposits of uninsured public monies with an eligible depository.
 - 2. A public depositor that decides to exercise the exemption provided under A.R.S. § 35-1204(B) shall provide written notice of the decision to the Administrator.
- B.** Eligible depositories. Except as provided in subsections (B)(1) and (2), an eligible depository that accepts or retains public monies shall pledge required collateral to the collateral pool.
 - 1. An eligible depository that accepts and retains only insured public monies is not required to pledge collateral to the collateral pool. However, the eligible depository shall provide a notarized statement to the Administrator that lists:
 - a. Each public depositor for which the eligible depository is retaining public monies.
 - b. The deposit balance for each public depositor, and
 - c. The total insurance available for each public depositor.
 - 2. An eligible depository that accepts and retains all public monies in the trust department of the eligible depository and secures the public monies under 12 U.S.C. Section 92a is not required to pledge collateral to the collateral pool.
- C.** An eligible depository doing business in Arizona that does not accept or retain public monies shall attest to this fact on a notarized statement that is available from the Administrator.

R2-14-103. Collateral Required

- A.** An eligible depository that intends to accept and retain uninsured public monies shall execute a Collateral Security Agreement with the Treasurer, using a form that is available on the web site of the Treasurer. In the agreement, the eligible depository shall pledge for the benefit of the Treasurer eligible collateral having a market value of at least 102 percent of the retained amount of uninsured public monies.
- B.** An eligible depository shall deposit all eligible collateral, including a letter of credit that satisfies the requirements at A.R.S. §§ 35-312(A)(4) and 35-323(G)(4), with a qualified escrow agent that will hold the required collateral in trust for the use and benefit of the Treasurer on behalf of the collateral pool.
- C.** An eligible depository that does not have a preferred qualified escrow agent may ask the Administrator for permission to use the Treasurer’s existing custodial contracts as a qualified escrow agent.
- D.** An eligible depository that has pledged required collateral to a housing authority in an amount and manner required by the United States Department of Housing and Urban Development is not required to pledge additional collateral to the collateral pool. However, the eligible depository shall include the HUD-related public monies in the reports required



under R2-14-105.

- E.** If an eligible depository uses a security as eligible collateral, the eligible depository shall:
1. At the time the security is deposited with a qualified escrow agent, forward to the Administrator the par and market value of the security, identified by the security's CUSIP, and the source of the valuation. The Administrator shall, from time to time, test the market value of the security using an independent source; and
 2. If the security matures or is called for redemption, the cash proceeds will be retained by the qualified escrow agent until substitute collateral is pledged to replace the matured or called security.

R2-14-104. Increasing, Releasing, and Substituting Eligible Collateral

- A.** If a public depositor anticipates making a late-day (5:00 p.m. EST or later) increase in the amount of public monies deposited with an eligible depository, the public depositor shall notify the Administrator. The Administrator shall notify the eligible depository of the anticipated deposit and if needed, require that additional eligible collateral be pledged.
- B.** If an eligible depository determines that the amount of eligible collateral deposited with a qualified escrow agent exceeds the amount required under R2-14-103(A), the eligible depository may request that the Administrator release the excess collateral or if the collateral is a letter of credit, consent to a reduction in the face amount of credit. The Administrator shall approve the request as soon as the Administrator determines that the amount of collateral held by the qualified escrow agent exceeds the amount required.
- C.** Except as provided in A.R.S. § 35-1208(C), an eligible depository may make substitutions of pledged eligible collateral if the amount of required collateral is maintained.

R2-14-105. Reports Required

- A.** Contact information. An eligible depository shall provide the Administrator, using a form available on the Treasurer's web site, with the following:
1. Information the Administrator needs to contact the individual responsible for ensuring that the eligible depository complies with A.R.S. Title 35, Chapter 10, and this Chapter;
 2. Information the Administrator needs to contact each public depositor including:
 - a. Name and physical address of the public depositor; and
 - b. Telephone and fax numbers and e-mail address of the individual who is to receive monthly statements from the Administrator; and
 3. Updated information promptly after any of the information provided under subsection (A)(1) or (2) changes.
- B.** Daily report. An eligible depository shall provide the Administrator, using a form or format available on the Treasurer's web site or another form or format approved by the Administrator, a summary report no later than 12:30 p.m. EST every business day. The report, which shall be transmitted electronically, shall contain the following information:
1. Name of eligible depository making the report,
 2. Date of report,
 3. Demand-deposit ledger balance,
 4. Interest-bearing ledger balance,
 5. Amount of deposits covered by the FDIC,
 6. Amount of uninsured deposits,
 7. Amount of required collateral,
 8. CUSIPs of the collateral pledged to collateral pool,
 9. Market value of collateral pledged to collateral pool,
 10. Original par value of collateral pledged to collateral pool,
 11. Number of demand-deposit accounts of public monies, and
 12. Number of interest-bearing accounts of public monies.
- C.** Monthly report. On or before the eighth day of each month, an eligible depository shall provide the Administrator, using a form or format available on the Treasurer's web site or another form or format approved by the Administrator, a report that contains the following information regarding each public depositor:
1. Name of public depositor,
 2. Taxpayer identification of the public depositor,
 3. Name and number of the public depositor's account,
 4. Amount of demand deposit held for the public depositor,
 5. Amount of interest-bearing deposit held for the public depositor,
 6. Amount of total deposits held for the public depositor,
 7. Amount of the public depositor's deposits covered by the FDIC, and
 8. Amount of required collateral to protect the public depositor's deposits.
- D.** Detailed daily report. When the Administrator determines that additional information is needed to ensure that all public monies are protected, an eligible depository shall provide the information required under subsections (B) and (C) sorted first by public depositor and second by taxpayer identification number.
- E.** Additional reports. If requested by the Administrator, an eligible depositor that is a bank or savings institution shall submit to the Administrator a copy of the quarterly Report of Condition and Income filed with the Federal Financial Institutions Examination Council's Central Data Repository, as required under 12 U.S.C. § 324 (state member banks), 12 U.S.C. § 1817 (state non-member banks), 12 U.S.C. § 161 (national banks), and 12 U.S.C. § 1464 (savings institutions). An eligible depository that is a credit union shall submit to the Administrator a copy of the quarterly Call Report filed



with the National Credit Union Administration, as required under 12 U.S.C. 1756.

R2-14-106. Use of Reports

- A.** If the Administrator determines after reviewing either the daily report or detailed daily report that an eligible depository has pledged insufficient collateral to the collateral pool, the Administrator shall immediately contact the eligible depository and require that additional collateral be pledged.
- B.** An eligible depository that is contacted under subsection (A) shall send a report to the Administrator identifying the additional collateral pledged by CUSIP, par value, and market value.
- C.** If an eligible depository fails to pledge additional collateral as required under subsection (A) or provide the report required under subsection (B) by 3:00 p.m. EST of the day contacted by the Administrator, the Administrator shall take one or more of the following actions:
 - 1.** Provide written notice to the eligible depository of intent to assess a daily civil penalty of:
 - a.** \$250 for failure to comply with subsection (A), and
 - b.** \$100 for failure to comply with subsection (B);
 - 2.** Provide electronic notice of the noncompliance to the:
 - a.** Superintendent of the Department of Financial Institutions, and
 - b.** Public depositories that have deposits with the eligible depository, and
 - 3.** Post notice of the noncompliance on the Treasurer's web site.
- D.** The Administrator shall forward an electronic copy of the monthly report to each public depositor within five days after receiving the report. Before the end of the month, each public depositor shall review the monthly report and inform the Administrator of any discrepancy between the information in the monthly report and the account statement provided directly to the public depositor by the eligible depository. If the public depositor fails to inform the Administrator of a discrepancy before the end of the month, the Administrator shall deem the monthly report to be correct.

R2-14-107. Fee Assessment

- A.** Under A.R.S. § 35-1212, the collateral pool is required to be self-supporting. The Administrator is authorized to assess fair and equitable fees from eligible depositories.
- B.** Annual assessment. The Administrator shall annually assess an eligible depository required under R2-14-102(B) to pledge eligible collateral to the collateral pool an amount that reflects the eligible depository's daily average portion of uninsured public monies on deposit.
 - 1.** The Administrator shall determine the total amount to be assessed based on expenses incurred to administer and enforce the collateral pool during a calendar year.
 - 2.** The Administrator shall inform each eligible depository of the depository's assessed amount by January 15 of each year.
 - 3.** An eligible depository shall pay the assessed amount by February 15 of each year.
 - 4.** If an eligible depository enters or leaves the collateral pool during a calendar year, the Administrator shall make or refund a partial assessment.
- C.** Additional assessment. When an eligible depository fails to comply fully with A.R.S. Title 35, Chapter 10 or this Chapter, the Administrator incurs extra expenses to administer and enforce the collateral pool. When this happens, the Administrator shall assess an additional fee from the non-complying eligible depository equal to the amount of extra expense incurred by the Administrator.

R2-14-108. Payment of Losses

- A.** The Administrator shall find that an eligible depository is in default if the eligible depository:
 - 1.** Fails to return to a public depositor public monies including earned interest in accordance with the terms of the depository agreement;
 - 2.** Is subject to a court order or formal action by a supervisory authority that has the effect of restraining the eligible depository from making payments of deposit liabilities; or
 - 3.** Has had a receiver appointed by a supervisory authority.
- B.** If the Administrator determines that an eligible depository is in default or insolvent, the Administrator shall provide notice of the default or insolvency to all public depositories that have deposited public monies with the defaulting or insolvent eligible depository.
- C.** If the Administrator determines that an eligible depository is in default or insolvent, the Administrator shall revoke authorization for the eligible depository to make substitutions of eligible collateral.
- D.** If the Administrator determines that an eligible depository is in default or insolvent, the Administrator, in cooperation with the Arizona Department of Financial Institutions and the receiver appointed for the eligible depository, if any, shall:
 - 1.** If the receiver has found a new eligible depository that agrees to accept the public monies deposited with the defaulting or insolvent eligible depository:
 - a.** Transfer the required collateral from the defaulting or insolvent eligible depository to the new eligible depository, and
 - b.** Provide notice of the transfer to the public depositories; or
 - 2.** If a new eligible depository is not found, take possession of the required collateral and do one or both of the following:



- a. Liquidate the required collateral in an orderly fashion and distribute the proceeds on a pro-rata basis to the public depositors; or
- b. Upon request from a public depositor and if it is possible to segregate and divide the required collateral, provide a pro-rata share of the segregated and divided collateral to the public depositor making the request.
3. If the Administrator determines that the default of an eligible depository is not due to the insolvency or receivership of the eligible depository, any transfer, distribution, or liquidation of required collateral under subsections (D)(1) or (D)(2) by the Administrator will allow the eligible depository to reduce account balances correspondingly for public fund deposits subject to the transfer, distribution, or liquidation.

R2-14-109. Civil Penalty for Noncompliance: Hearing

- A. The Administrator may assess a civil penalty in the amount specified under A.R.S. § 35-1211 against an eligible depository for failing to:
 1. Maintain required collateral, or
 2. File a report required under R2-14-105.
- B. If the Administrator determines that an eligible depository has failed to maintain required collateral or file a required report, the Administrator shall serve written notice by certified mail to the eligible depository of intent to assess a civil penalty. The Administrator shall ensure that the notice provides the information required under A.R.S. § 41-1092.03(A).
- C. An eligible depository that receives notice under subsection (B) may make a written request for a hearing. The eligible depository shall make the request for hearing within 30 days after receipt of the notice under subsection (B).
- D. At least 20 days before a scheduled hearing, an eligible depository may make a written request for an informal settlement conference.
- E. The Administrator shall ensure that hearings are conducted using the procedures in A.R.S. Title 41, Chapter 6, Article 10 and rules of the Office of Administrative Hearings.