

# Chapter 389-12 WAC

## Practice and procedure — public depositaries

(Effective September 9, 2016)

### WAC Sections

389-12-010	Promulgation.
389-12-020	Definitions.
389-12-030	New public depositaries.
389-12-035	Withdrawing public depositaries.
389-12-040	Computation and report of maximum liability.
389-12-045	Maximum liability established by resolution.
389-12-050	Valuation.
389-12-060	Deposit or withdrawal of collateral.
389-12-065	Aggregate deposit limitations.
389-12-071	Minimum standards for the financial condition of public depositaries.
389-12-075	Collateral level to be maintained.
389-12-080	Maximum deposit limitation.
389-12-090	Additional reports, inspections, audits.
389-12-100	Violations -- Sanction.
389-12-120	Administration.
389-12-130	Financial institution mergers.
389-12-140	Demand deposit account with financial institution located outside the state of Washington.

### **389-12-010**

#### **Promulgation.**

The public deposit protection commission, hereinafter referred to as the "commission," after due and proper notice, and pursuant to the provisions of chapter 193, Laws of 1969 1st ex. sess., as last amended by chapter 2, Laws of 2016 1st sp. sess., hereinafter referred to as the "act," hereby adopts and promulgates the following rules and regulations.

### **389-12-020**

#### **Definitions.**

Unless the context requires otherwise:

(1) "Alien bank" for the purposes of these rules means a financial institution organized under the laws of a foreign country and having its principal place of business in that country, the majority of the beneficial ownership and control of which is vested in citizens of countries other than the United States of America.

(2) "Commission report" means a formal accounting rendered by all public depositaries to the commission, which details pertinent information of each public depositary in a format supplied by the commission.

(3) "Commission report date" means the last day of each calendar quarter.

(4) "Commission report due date" means the commission report is due in the office of the commission no later than one business day after the date a public depositary's financial report is due to its federal regulatory authority.

(5) "Date of loss" means the date on which a loss shall be deemed to have occurred within the meaning of the act, and shall be the first to happen of the following:

- The date of the taking of possession of the financial institution by a supervisory agency;
- The date of the appointment of the receiver or conservator for a financial institution;
- The date of the commencement of a voluntary liquidation proceeding for a financial institution;
- The date of an order issued by a regulatory authority or a court of competent jurisdiction restraining a financial institution from making payments on deposit liabilities; or
- The date on which the commission declares that a financial institution no longer has the ability to repay public deposits in full.

(6) "Depository pledge agreement" means the same as defined in RCW 39.58.010, on a form supplied by the commission, wherein a financial institution, in compliance with the act and as a condition precedent to becoming or continuing to be a public depository, transfers and delivers securities which are eligible collateral to a trustee approved by the commission, which agrees to safekeep such securities for the primary benefit of the commission under the terms and conditions of the agreement and for the purposes set forth by the act and the regulations of the commission. Such agreement shall be executed on behalf of the commission by the chairman. The agreement shall be approved by the board of directors or loan committee of the financial institution. Copies of the meeting minutes which reflect the approval are to be provided to the commission.

(7) "Financial report" means the consolidated reports of condition and income required by the Federal Financial Institutions Examination Council.

(8) "Monthly report" means a report prepared by all public depositories to the commission, which details insured and uninsured public deposits and other pertinent information of each public depository in a format supplied by the commission.

(9) "Monthly report date" means the last day of each calendar month.

(10) "Monthly report due date" means the monthly report is due in the office of the commission no later than eight business days after the monthly report date or other date as set by the commission.

(11) "Net worth" of a public depository means the same as defined in RCW 39.58.010, except that net worth for public depositories with facilities outside Washington state may be adjusted by the commission to reflect the public depositories' proportional net worth position in Washington state.

(12) "Out-of-state bank" for the purposes of these rules means a financial institution located outside the state of Washington.

(13) "Segregation of collateral" means the transfer and delivery of eligible securities by a public depository to a trustee pursuant to a depository pledge agreement or delivery of a letter of credit to the commission.

(14) "Uninsured public deposits" means public deposits not backed by the full faith and credit of the United States government.

**389-12-030****New public depositaries.**

Any financial institution in the state of Washington eligible under the act, in order to become a public depositary, must be approved by the commission and segregate collateral in the manner as set forth in chapter 39.58 RCW and these rules prior to the receipt of public deposits. Until such time as public depositaries have submitted four consecutive commission reports to the commission as required by RCW 39.58.100, they shall at all times be required to pledge and segregate eligible collateral valued in an amount equal to not less than its maximum liability or such other sum or measure established by the commission by rule or resolution.

**389-12-035****Withdrawing public depositaries.**

No public depositary shall be released from its duties and liabilities until such financial institution has reported four accurate, consecutive commission reports indicating a zero balance of public funds on deposit. At such time, upon request by a public depositary, the commission shall terminate a financial institution's status as a public depositary.

**389-12-040****Computation and report of maximum liability.**

On each commission report date each public depositary shall calculate its maximum liability in a format supplied by the commission. The commission report shall, in addition to other information required by the commission in its discretion, include the amount of insured and uninsured public deposits of Washington state and its political subdivisions for the most recent commission report date, the uninsured public deposits as shown on the four most recent commission reports (i.e., current report and three immediately preceding reports), the average of uninsured public deposits for the four most recent commission report dates, and the public depositary's maximum liability as defined in chapter 39.58 RCW.

The commission report shall be received in the office of the commission by the commission report due date, and shall also include schedules, as determined by the commission, from the public depositary's most recent financial report to its federal regulatory authority. Any public depositary failing to submit its commission report by the commission report due date shall be subject to appropriate sanction as provided in chapter 39.58 RCW and WAC 389-12-100.

At the end of each calendar quarter, the commission shall provide each public depositary the amount constituting thirty percent of total public funds on deposit in Washington state for the preceding quarter. Public depositaries shall use this amount to monitor their total public funds on deposit for the ensuing quarter, unless notified of a revised amount by the commission.

Upon request from a public depositary the commission may, for good cause shown, extend the commission report due date for commission reports for a period not to exceed five days.

If the maximum liability has increased from the previous commission report or if aggregate public deposits exceed the limitations prescribed in RCW 39.58.135, the public depositary shall immediately increase its collateral and the commission shall be so notified.

Each public depositary shall provide to the commission a copy of any changes, amendments, or alterations to the public depositary's financial report as submitted to its federal regulatory authority which relate to public funds on deposit and net worth.

A monthly report of insured and uninsured public deposits, and other pertinent information shall, in a format supplied by the commission, be submitted by each public depository to the commission no later than the monthly report date. If applicable, adjustments to the public depositories' last reported net worth and/or additional collateral being pledged shall be listed on the monthly report. The monthly report shall be submitted to the commission every month. Any public depository failing to submit its monthly report by the monthly report due date shall be subject to appropriate sanction as provided in chapter 39.58 RCW and WAC 389-12-100.

#### **389-12-045**

##### **Maximum liability established by resolution.**

Pursuant to RCW 39.58.010, the commission may from time to time set by resolution such other sum or measure to determine the maximum liability of a public depository. In setting such other sum or measure, the commission shall consider factors including, but not limited to, the overall market conditions for financial institutions, the extent to which public deposit protections might be lessened, and the effects such change may have on other public depositories.

#### **389-12-050**

##### **Valuation.**

Securities pledged as collateral by a public depository will be valued at market value. Letters of credit pledged as collateral by a public depository will be valued at the maximum amount available to be drawn.

Value shall be computed as of the date of segregation or the last preceding commission report date, whichever is later. When the commission report is submitted, each public depository shall certify, in a format supplied by the commission, a current listing of collateral pledged and their current value as of the commission report date.

#### **389-12-060**

##### **Deposit or withdrawal of collateral.**

A public depository must submit a request to the commission to reduce the amount of collateral pledged. Except for the exchange or substitution of securities having an equal or greater market value, the trustee shall not permit the withdrawal of any security without advance approval of the commission.

The trustee, under a depository pledge agreement, shall inform the commission whenever securities are delivered to or released by the trustee by providing to the commission, within twenty-four hours following such deposit or withdrawal, a copy of the transaction receipt.

When a public depository pledges eligible securities whose payments include periodic principal reduction, the trustee shall advise the commission, on no less than a monthly basis, of the amounts of such principal payments as well as the new total value which result from the principal payments.

No costs, fees and expenses incidental to the functioning of the depository pledge agreement shall be a charge against the commission or its interest in the securities pledged.

Each public depository shall at all times maintain eligible collateral segregated and pledged having a value at least equal to its maximum liability as defined in the act or such other sum or measure set by the commission and under these rules and regulations. Compliance with the foregoing requirement shall be the public depository's responsibility regardless of the frequency and form of reports required by the commission.

### **389-12-065**

#### **Aggregate deposit limitations.**

(1) Whenever the public funds on deposit in a public depository exceed the limits set forth in RCW 39.58.135, such public depository shall immediately:

(a) Notify the commission; and

(b) Pledge additional collateral, if necessary, to provide one hundred percent collateralization of such excess deposits.

(2) When a public depository's net worth position is reduced, such public depository shall determine if any treasurer's or state treasurer's funds on deposit exceed the revised net worth. If any such excess deposits exist, the public depository shall immediately notify the commission and provide the commission with a detailed accounting of deposits. The public depository shall also advise the commission of its intent to:

(a) Provide one hundred percent collateralization of the excess deposits; or

(b) Allow the treasurer to withdraw such deposits in accordance with RCW 39.58.130.

### **389-12-071**

#### **Minimum standards for the financial condition of public depositories.**

Notwithstanding any other provisions of chapter 39.58 RCW and chapter 389-12 WAC, a public depository shall be classified into capital categories as provided under regulations implementing section 38 of the Federal Deposit Insurance Act (FDIA) issued by the federal regulatory authority for that public depository. If a public depository is categorized as undercapitalized for purposes of section 38 of the FDIA, the public depository shall pledge collateral, valued in a total amount at least equal to one hundred percent of its uninsured public deposits, or take other actions as determined by the commission; however, the commission may, at any time, in its discretion, require a public depository to pledge additional collateral after consultation with the appropriate regulatory authorities.

The collateral pledged under this section shall not be less than the maximum liability as required in RCW 39.58.010, but may include collateral required by RCW 39.58.130, 39.58.135, and WAC 389-12-065.

### **389-12-075**

#### **Collateral level to be maintained.**

Whenever a public depository must pledge collateral in accordance with RCW 39.58.130, 39.58.135, WAC 389-12-065, and 389-12-071, the public depository must monitor its uninsured public deposits on a daily basis and maintain collateral valued accordingly.

### **389-12-080**

#### **Maximum deposit limitation.**

In determining the maximum deposit limitation of any public depository, a treasurer or state treasurer, unless advised to the contrary by the commission, may assume that each public depository's net worth has remained unchanged from that stated in the most recently rendered commission report.

### **389-12-090**

#### **Additional reports, inspections, audits.**

The commission may from time to time require such additional reports as will facilitate the performance of its functions. All public depositories are required to submit to such inspections and/or audits of their public deposits and/or eligible collateral as the commission may from time to time require. Any public depository failing to respond timely to a request from the commission shall be subject to appropriate sanction as provided in chapter 39.58 RCW and WAC 389-12-100.

### **389-12-100**

#### **Violations — Sanction.**

If a public depository fails to comply with any of these rules, or of any of the provisions of the act, or any policies of the commission, the commission may at its option deny or revoke the authority of such public depository to act as such, or otherwise suspend such public depository from receiving or holding public deposits until such time as the public depository complies with the commission's rules and policies.

### **389-12-120**

#### **Administration.**

The commission shall be administered through the office of the Washington State Treasurer, Olympia, Washington.

### **389-12-130**

#### **Financial institution mergers.**

Within thirty calendar days of any merger, take over, or acquisition of a public depository, the acquiring financial institution must: (1) Be a public depository, or (2) become a public depository as provided for in WAC 389-12-030, or (3) notify the commission of its intent not to become a public depository. A financial institution electing not to become a public depository must work with the commission, treasurers, and the state treasurer to orderly discharge public deposits.

The maximum liability of a public depository under chapter 39.58 RCW shall not be altered or diminished by any merger, take over, or acquisition. Such liability shall be assumed by agreement or operation of law by the successor entity or resulting financial institution and no pledged collateral shall be released by the commission or the trustee until such assumed liability is extinguished or evidenced through the segregation of collateral by the successor entity or resulting financial institution.

### **389-12-140**

#### **Demand deposit account with financial institution located outside the state of Washington.**

A treasurer or state treasurer may, as provided in chapter 39.58 RCW, with the approval of the commission, establish a demand deposit account with an out-of-state bank or an alien bank. Prior to establishing such account, a treasurer or state treasurer shall submit, in writing, for review by the commission, the following information: (1) Detailed information setting forth the justification for such account, projected cash flows, and other benefits which will accrue to the public entity through the establishment of such account; (2) period of time such account will be in use; (3) reasons such account cannot be established with a public depository; (4) name and location of financial institution or alien bank and name and telephone number of contact person at financial institution or alien bank; (5) extent of deposit insurance provided by financial institution or alien bank; (6) most recent fiscal year end and quarterly financial report, if any, provided to regulatory agency and/or shareholders by financial institution or alien bank; (7) proposed method of ensuring safety of deposits if not fully covered by deposit insurance, and (8) such other information as the commission reasonably may require.

The account shall not be established until it has been authorized by a resolution of the commission or action authorized by the chair, setting forth the terms and conditions for such account. A copy of such resolution will be forwarded to the public entity and the state auditor.

Accounts authorized under this section are not considered to be protected against loss by the Public Deposit Protection Act.