

**COMMONWEALTH OF VIRGINIA
SECURITY FOR PUBLIC DEPOSITS ACT
TREASURY BOARD GUIDELINES TO PERMIT BANKS
TO WITHDRAW FROM POOLING PROCEDURES
FOR THE PAYMENT OF LOSSES**

PURPOSE – To establish guidelines, consistent with the primary purpose of protecting public deposits, to permit qualified public depositories (hereafter “depositories”) to withdraw from the procedures of the Virginia Security for Public Deposits Act, *Code of Virginia* § 2.2-4403, for the payment of losses. A depository then governed by *Code of Virginia* § 2.2-4404 that complies with these Guidelines will be responsible for securing only its public deposits and will not be assessed for losses of another depository that is in default or has become insolvent.

STATUTORY AUTHORITY – *Code of Virginia* §§ 2.2-4403, 2.2-4404, and 2.2-4405. *Code of Virginia* § 2.2-4405(5), as amended, authorizes the Treasury Board to “[e]stablish guidelines to permit banks to withdraw from the procedures for the payment of losses under § 2.2-4403[, as amended,] and instead be governed by the procedures for the payment of losses under § 2.2-4404[, as amended].”

REQUIREMENTS FOR WITHDRAWAL – The Virginia Treasury Board hereby establishes the following Guidelines by which depositories withdraw from *Code of Virginia* § 2.2-4403 and choose to be governed by § 2.2-4404 (hereinafter “opt-out depositories”):

A. Election Frequency.

1. **Withdrawal.** Depositories electing to withdraw from *Code of Virginia* § 2.2-4403, and from the collateral pool imposing contingent liability, and then be governed by § 2.2-4404, shall submit an Election Form, attached as Exhibit B, to be received by the Treasury Board during the period beginning November 1 through the close of business, Richmond, Virginia time, on December 1, or if not a business day, the next business day after December 1, on which depositories will notify of their intent to withdraw and agree to abide by the withdrawal requirements established in these Guidelines.
2. **New Qualified Public Depositories.** New qualified public depositories shall submit the Election Form, attached as Exhibit B, at the same time that they submit their Public Deposit Security Agreement to the Treasury Board for approval.
3. **Merged or Acquired Depositories.** A bank, savings bank, or trust company that is already a qualified public depository and is the surviving entity in a merger or acquisition may change its opt-out status by submitting the Election Form, attached as Exhibit B, within sixty (60) days of the merger or acquisition.

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4. **Approval.** Opt-out depositories will be deemed withdrawn from *Code of Virginia* § 2.2-4403 and governed by § 2.2-4404 when the Election Form is received and approved by the Treasury Board. The Treasury Board shall return a copy of the approved Election Form, attached as Exhibit B, to the opt-out depository.
 5. **Re-entry.** Opt-out depositories may re-enter the collateral pool and be governed by *Code of Virginia* § 2.2-4403 if the opt-out depository has had a rating of 125 or above by IDC Financial Publishing for the second and third quarters of the year in which the opt-out depository requests re-entry and was not under a formal federal or state bank regulatory enforcement action in the year when the opt-out depository requests re-entry. To request such re-entry, an opt-out depository shall submit an Election Form, attached as Exhibit B, the timing of such Form's submission governed by Part A.1. After such notification, the depository will be deemed governed by *Code of Virginia* § 2.2-4403 upon approval by the Treasury Board. The Treasury Board may deny re-entry when deemed prudent under the circumstances, for reasons including, but not limited to, a history of noncompliance.
 6. **Lack of Notice.** If the Treasury Board does not receive an Election Form, attached as Exhibit B, by the deadline established in Part A.1. of these Guidelines, the depository's current election will remain in force for the next calendar year.
- B. Minimum Collateralization.** Opt-out depositories shall pledge collateral priced at a minimum of:
1. 130% of the value of all public deposits held by the opt-out depository, net of deposits insured by the Federal Deposit Insurance Corporation (FDIC), if the opt-out depository is given a rating by IDC Financial Publishing of 74 or below, is without an IDC rating, or is under a formal federal or state bank regulatory enforcement action;
 2. 120% of the value of all public deposits held by the opt-out depository, net of deposits insured by the FDIC, if the opt-out depository is given a rating by IDC Financial Publishing between 75 and 124;
 3. 110% of the value of all public deposits held by the opt-out depository, net of deposits insured by the FDIC, if the opt-out depository is given a rating by IDC Financial Publishing between 125 and 199; or
 4. 105% of the value of all public deposits held by the opt-out depository, net of deposits insured by the FDIC, if the opt-out depository is given a rating by IDC Financial Publishing of 200 or above.

C. Consequence of Undercollateralization.

1. **Minimum Collateralization Increase.** If an opt-out depository is undercollateralized as of the end of the week and as shown on its weekly report (has not placed sufficient minimum collateral with its escrow agent as set out in Part B of these Guidelines), such minimum collateralization requirement will automatically increase 5% (to 135%, 125%, 115%, and 110%, respectively) for the next six reporting months for each event of undercollateralization, except if that opt-out depository is undercollateralized by an amount less than 5% and that opt-out depository has not been undercollateralized more than once during the previous 12 reporting months. The Treasury Board shall notify the opt-out depository of such consequence by electronic mail.
2. **Multiple Events of or Significant Undercollateralization.** If an opt-out depository is undercollateralized more than twice in a 12-month period under Part C.1. of these Guidelines, an additional 5% will be added for each additional event of undercollateralization during the 12-month period, even if subsequent events of undercollateralization are of an amount less than 5%. In such cases, the opt-out depository's board of directors and public depositors will be notified of such undercollateralization. Depending on the severity of one or more instances of undercollateralization, the Treasury Board may take additional punitive actions as it may determine prudent under the circumstances, including but not limited to terminating the depository's Public Deposit Security Agreement.
3. **Treasurer's Discretion Given Extenuating Circumstances.** The State Treasurer may exercise discretion in certain extenuating circumstances and potentially suspend any applicable penalty for undercollateralization and reporting for noncompliance. This exemption process would apply in two instances: 1) if a depository is undercollateralized by less than 5% more than twice in a rolling 12-month period, AND/OR 2) if a depository is undercollateralized by more than 5% in any weekly reporting. In these instances, the State Treasurer would require a written detailed explanation from a senior depository official explaining the extenuating circumstances leading to the undercollateralization and the processes they have implemented to ensure future collateralization compliance.
4. **Consequence imposed on Opt-out Depository surviving Merger or Acquisition.** Any consequence imposed on an opt-out depository shall continue for the full period as required by Part C.1 and 2 after a merger or acquisition if that opt-out depository is the surviving entity.

D. Eligible Collateral. Opt-out depositories may pledge only the following types of collateral:

1. Obligations issued and fully guaranteed by the U.S. Government, U.S. Treasury, or any U.S. Agency;

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2. Unsubordinated obligations issued and fully guaranteed by a U.S. Government-Sponsored Enterprise;
3. Obligations of the Commonwealth of Virginia and of any political subdivision of the Commonwealth of Virginia, including but not limited to counties, cities and towns, unconditionally guaranteed as to the payment of principal and interest upon which there is no default, and revenue bonds issued by the above-mentioned entities upon which there is no default, both categories rated BBB or higher by Standard & Poor's Financial Services LLC or rated Baa2 or higher by Moody's Investors Service, Inc. and valued at 90% of their market value;
4. Obligations of states and their political subdivisions, other than of the Commonwealth of Virginia, including but not limited to counties, cities and towns, unconditionally guaranteed as to the payment of principal and interest upon which there is no default, and revenue bonds issued by the above-mentioned entities upon which there is no default, both categories rated A or higher by Standard & Poor's Financial Services LLC or rated A2 or higher by Moody's Investors Service, Inc. and valued at 80% of their market value;
5. International Development Obligations;
6. Mortgage-Backed Securities and Collateralized Mortgage Obligations, issued by U.S. Agencies or Government-Sponsored Enterprises, valued at 80% of their market value; and
7. Federal Home Loan Bank ("FHLB") Letters of Credit as outlined in the Treasury Board Guidelines for the use of FHLB letters of credit as eligible collateral.

E. Reporting.

1. **Weekly Reporting.** Opt-out depositories and their escrow agents shall electronically report weekly information contained in Exhibit A. This weekly reporting is in addition to monthly reporting requirements. Opt-out depositories and their escrow agents shall submit their weekly reports by noon, Eastern Prevailing time, on the second business day of each week for the preceding week's ending balances.
2. **Pricing Source and Disclosure.** Opt-out depositories and their escrow agents must disclose their pricing source for valuing collateral on the Public Depository Weekly Report, based on Exhibit A.
3. **Penalty for Late Reporting.** If an opt-out depository routinely (ten or more times in a rolling twelve-month period) fails to report as outlined in Part E.1., the Treasury Board may take punitive action against the opt-out depository as deemed prudent under the circumstances, including but not limited to increased

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collateralization. In extreme cases of late reporting, the Treasury Board may terminate the depository's Public Deposit Security Agreement.

F. Responsibility for Payment of Losses under *Code of Virginia* § 2.2-4403 after Election to be Governed under § 2.2-4404. During the first twelve months after becoming an opt-out depository and governed by § 2.2-4404, an opt-out depository will be liable for losses of a pooled depository that becomes insolvent or defaults in proportion to the number of months in the previous twelve-month period that the opt-out depository was part of the collateral pool.

Exhibit A – PUBLIC DEPOSITORY WEEKLY REPORT

Exhibit B – ELECTION FORM

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EXHIBIT A

PUBLIC DEPOSITORY WEEKLY REPORT

1) Total All Public Deposits on _____

(Week Ending)

Demand: \$ _____

Time/Savings: \$ _____

Less FDIC \$ _____

NET: \$ _____

2) Required Collateral: _____ % of (1) above: \$ _____

3) Pledged Collateral current week ending:

From Schedule A: Original Par Value . . . \$ _____
or Book Value

Current Market Value . . . \$ _____
or Adjusted Current Market

I hereby certify that the institution's collateral and public fund balance information submitted for this reporting period is true and correct to the best of my knowledge and belief.

EXHIBIT B



Commonwealth of Virginia Treasury Board

COLLATERAL POOL ELECTION FORM

Security of Public Deposits Program

Printed Legal Name of the Qualified Public Depository

Home Office City and State

I, _____, _____,
Printed Name Title

Certify that I am an officer of the above named Qualified Public Depository duly authorized to agree to bind the above named Qualified Public Depository (check one):

[] to withdraw from the collateral pool under *Code of Virginia* § 2.2-4403 and be governed by § 2.2-4404, as allowed for by the Guidelines established by the Treasury Board by which the above named Qualified Public Depository agrees to abide. The Qualified Public Depository will report weekly to the Treasurer according to the Guidelines.

[] to enter the collateral pool under, and be governed by, *Code of Virginia* § 2.2-4403, as allowed for by the Guidelines established by the Treasury Board by which the above named Qualified Public Depository agrees to abide.

WITNESS my signature under seal _____
Printed Legal Name of Qualified Public Depository

on this ____ day of _____, _____.

Signature of Duly Authorized Officer

APPROVED by:

Commonwealth of Virginia Treasury Board, on this ____ day of _____, _____.

Name: _____

Title: _____

Executed in duplicate.