APA-2
07/04

Office of State Treasurer
SAFE Division

NOTICE OF INTENDED ACTION

AGENCY NAME: Office of State Treasurer

RULE NO. & TITLE:

892-X-1-.04	Collateral Pledging Levels
892-X-1-.07	Custodians
892-X-1-.18	Information

INTENDED ACTION:
The Office of State Treasurer, on behalf of the SAFE Board of Directors, proposes to amend certain existing Rules for the SAFE Program codified in Title 41, Chapter 14A, Code of Alabama 1975, as amended.

To amend Rule No. 892-X-1-.04 Collateral Pledging Levels
To amend Rule No. 892-X-1-.07 Custodians
To amend Rule No. 892-X-1-.18 Information

SUBSTANCE OF PROPOSED ACTION:
To amend Rule No. 892-X-1-.04 Collateral Pledging Levels to lower required pledging levels of Qualified Public Depositories from a range of 85% to 125% to a range of 70% to 115%.

To amend Rule No. 892-X-1-.07 Custodians to replace outdated reference to SAS70 audit to SSAE16, or similar, audit.

To amend Rule No. 892-X-1-.18 Information to direct Qualified Public Depositories to the SAFE report portal for certain information.

TIME, PLACE, MANNER OF PRESENTING VIEWS:
By personal appearance, mail, or electronic mail received no later than 1:00 PM CST on Friday, January 6, 2017, to: Office of State Treasurer, State Capitol S-106, 600 Dexter Avenue, Montgomery, AL 36104; telephone 334-242-7501; email daria.story@treasury.alabama.gov.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:
January 6, 2017 at 1:00 PM CST at the Office of State Treasurer, State Capitol Building, Room S-106, 600 Dexter Avenue, Montgomery, AL 36104

CONTACT PERSON AT AGENCY:
Daria Story, Assistant State Treasurer, 334-242-7506, daria.story@treasury.alabama.gov

Daria Story
Daria Story
Assistant State Treasurer

892-X-1-. 04 Collateral Pledging Levels.

(1) The financial condition of each QPD shall be reviewed to determine Collateral Pledging Levels for entry and continued participation in the SAFE Program. The review shall be for the purposes of the SAFE Program only and shall be used exclusively for the Program. The review shall include:

(a) An independent financial condition evaluation from a nationally recognized service, published quarterly. Such financial evaluation may be proprietary and not released as public information.

(b) Other pertinent information relating to the overall financial condition of the QPD.

(2) Each QPD shall pledge to the Treasurer Eligible Collateral equal to or in excess of its Required Collateral. One of the following Collateral Pledging Levels shall be used in determining Required Collateral:

(a) 70~~85~~ percent of the net average daily ledger balance of public deposits if the QPD maintains an independent financial evaluation of 70 or more.

(b) 80~~95~~ percent of the net average daily ledger balance of public deposits if the QPD maintains an independent financial evaluation of 40~~20~~ – 69.

(c) 90~~105~~ percent of the net average daily ledger balance of public deposits if the QPD maintains an independent financial evaluation of 20-39~~10-19~~.

(d) 100~~125~~ percent of the net average daily ledger balance of public deposits if the QPD maintains an independent financial evaluation of 10-19.~~below 10.~~

(e) 115 percent of the net average daily ledger balance of public deposits if the QPD maintains an independent financial evaluation below 10.

(~~f~~e) 150 percent of an established maximum amount of public deposits may be required if a QPD experiences significant financial deterioration or at Board discretion.

(~~g~~f) 100 percent of the net average daily ledger balance of public deposits in the case of a newly established bank. This pledging level will be updated upon receipt of first financial evaluation.

(~~h~~g) 5 percentage points will be added to any of the above levels if the QPD exhibits one or both of the following conditions:

1. Net average daily ledger balance of public deposits exceeds Tier 1 capital.

2. Net average monthly ledger balance of public deposits comprises 20% or more of total public deposits held in all QPD's.

(h) A QPD may be required to pledge at a higher level for repeated violations of the SAFE Program provisions and rules upon the discretion of the Board.

(i) Minimum Required Collateral of $100,000.

(3) If a QPD maintains an independent financial evaluation below 10, the following actions may be deemed appropriate:

(a) Additional monthly reporting, including financial information and a listing of all public deposits;

(b) Collateral safekept in a Treasurer-Designated Custodian.

(4) The SAFE Board shall review, monitor, and modify these guidelines as necessary to meet the changing needs of the SAFE Program. The Treasurer shall notify each QPD of any changes as they occur.

Author: Daria Story, SAFE Division, Office of State Treasurer
Statutory Authority: Sections 41-14A-5 and 41-14A-6, Code of Alabama 1975, as amended.
History: **New Rule:** Filed March, 28, 2001; effective May 2, 2001.
Amended: Filed September 19, 2002; effective October 24, 2002. **Amended:** Filed December 20, 2004; effective January 24, 2005. **Amended:** Filed August 20, 2008; effective September 24, 2008.
Amended: Filed July 20, 2011; effective November 7, 2011.

892-X-1-. 07 Custodians.

(1) Each custodian designated by a QPD ("Custodian") shall be a bank, savings association or trust company that:

(a) Is organized and existing under the laws of the State of Alabama, any other state of the United States, or the United States.

(b) Has executed a Collateral Agreement in the format prescribed by the SAFE Board.

(c) Agrees to be subject to the jurisdiction of the courts of this state, or of courts of the United States which are located within this state, for the—purpose of any litigation arising.

(d) Has been approved by the Treasurer to act as a custodian.

(e) Upon request from the Treasurer, provides a confirmation of securities pledged to the Treasurer by each QPD in the format prescribed by the Treasurer.

(f) Agrees to provide financial information to the Treasurer upon request.

(g) Provides immediate notification to SAFE when any pledged mortgage backed security, CMO, or similar security is paid off.

(h) If a trust company, agrees to the following:

1. Provide a notice of good standing from its charter authority;

2. Hold and maintain $1 million in tangible capital;

3. Submit regulatory financial reports on a quarterly basis;

4. Submit its annual SSAE16~~SAS 70~~, or similar, audit, and the results be acceptable to SAFE;

5. Notify Treasurer of any and all public enforcement actions immediately.

(2) Financial institutions which exercise trust powers may hold collateral (other than Letters of Credit and the proceeds from any draws on any Letters of Credit) as security for deposits situated in that financial institution through its trust division.

(3) The Treasurer may designate one or more custodians a Treasurer-Designated Custodian to perform such functions as the Treasurer shall determine are appropriate and desirable in connection with the administration of the SAFE Program. Each Treasurer-Designated Custodian shall be a bank, savings association or trust company that meets the requirements of a Custodian.

(4) A Custodian may be assessed an administrative penalty or disqualified if it does one or more of the following:

(a) Fails to execute a Collateral Agreement.

(b) Releases pledged collateral without the Treasurer's approval.

(c) Fails to provide complete confirmations of pledged collateral within 7 business days.

(d) Fails to honor a request for reports, or an examination of funds or securities.

(e) Fails to pay an administrative penalty.

(5) The following administrative penalties may be enforced upon a Custodian in lieu of suspension or involuntary withdrawal:

(a) Notice of SAFE violation

1. The written notice of SAFE violation will be issued by email or fax to the custodian contact included in the collateral agreement upon the first occurrence of any action listed in (4) above.

2. The Custodian shall prepare a written response to the notice of SAFE violation that provides a corrective action plan within 30 calendar days of acknowledged receipt of the notice; or provides a statement with substantiating documentation that the infraction has not occurred.

(b) Notice of SAFE Fine

1. A written notice of SAFE fine shall be issued by email or fax to the custodian contact included in the collateral agreement under the following conditions:

(i) The Recurrence of a previous infraction cited by a notice of SAFE violation;

(ii) No response is received from the Custodian to either the notice of SAFE violation or the notice of SAFE fine;

(iii) The Custodian refuses to correct a violation;

(iv) The violation significantly harms the SAFE Program.

(2) The Custodian shall prepare a written response to the notice of SAFE fine that provides a corrective action plan within 30 calendar days of acknowledged receipt of the notice and includes payment of fine by check; or provides a statement with substantiating documentation that the infraction has not occurred;

(c) Fines to be imposed against a Custodian will be as follows:

1. The first Recurrence of a violation shall result in a $2,500 fine;

2. The second Recurrence of a violation or a violation that causes significant harm to the SAFE Program shall be referred to the SAFE Board for review and assessment of penalty or disqualification as allowed by SAFE Law.

Author: Daria Story, SAFE Division, Office of State Treasurer
Statutory Authority: Sections 41-14A-2, 41-14A-5, 41-14A-6 and 41-14A-7, Code of Alabama 1975, as amended.
History: **New Rule:** Filed March 28, 2001; effective May 2, 2001.
Amended (only rule number changed) : Filed September 19, 2002; effective October 24, 2002. **Amended:** Filed January 23, 2004; effective February 27, 2004.
Amended: Filed December 20, 2004; effective January 24, 2005. **Amended:** Filed August 20, 2008; effective September 24, 2008.
Amended: Filed July 20, 2011; effective November 7, 2011.

892-X-1-. 18 Information.

(1) The Treasurer shall maintain a current listing of QPD's and SAFE forms at its website address www.treasury.alabama.gov, click SAFE.

(2) The total amount of all public deposits reported in the SAFE Program, and the 20% concentration level based on Net Average Public Deposits, shall be available to each QPD on the SAFE report portal. ~~on the Treasurer's website. The amount shall be updated quarterly and shall include the calculated 20% concentration level based on Net Average Public Deposits at the end of the quarter.~~

(3) Any information contained in a report by a QPD required by SAFE, which is confidential by any law of the United States or of this state, shall be considered confidential and not subject to dissemination to anyone other than the State Treasurer, SAFE Board, and SAFE staff.

Author: Daria Story, SAFE Division, Office of State Treasurer
Statutory Authority: Sections 41-14A-4 and 41-14A-6, Code of Alabama 1975, as amended.
History: **New Rule:** Filed March 28, 2001; effective May 2, 2001.
Amended: Filed September 19, 2002; effective October 24, 2002. **Amended (only rule number changed) :** Filed January 23, 2004; effective February 27, 2004. **Amended (Rule Number Only) :** Filed January 19, 2006; effective February 23, 2006. **Amended:** Filed August 20, 2008; effective September 24, 2008.
Amended: Filed July 20, 2011; effective November 7, 2011.