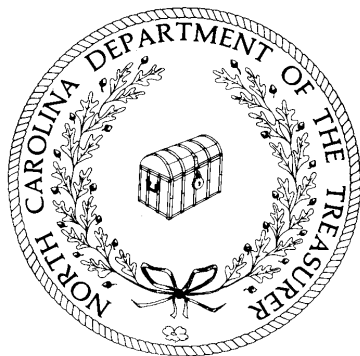


Collateralization Of Public Deposits In North Carolina



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Raleigh, North Carolina
June, 2009**

INTRODUCTION

Financial institutions in North Carolina serving as official depositories for public funds, as well as the public depositories of those funds, are subject to statutory and regulatory requirements regarding the collateralization of certain public deposits. This pamphlet contains the applicable Administrative Code pertaining to the collateralization requirements, as well as a general explanation of the Code. If there are any conflicts between the Code and the general explanation, the Code must be followed.

In addition to the statutory and regulatory requirements, Statement No. 3 of the Governmental Standards Board requires the financial statements of applicable governmental units to disclose any conditions of undercollateralization as of balance sheet date, and any significant violations of collateral requirements at any time during an audit period. Because of the importance of the various requirements, it is hoped that each recipient of this pamphlet will become familiar with the contents.

Discussions in this pamphlet do not include the requirements for collateralization of U.S. Treasury funds (Treasury Tax and Loan Accounts, etc.) See 31 CFR Part 202, 203 and 214 with information available at web site <http://fms.treas.gov/collateral/index.html>. Nor does this pamphlet include collateral requirements of banks' trust departments. (See G.S. 36A-63 for State-chartered and 12 CFR Reg 9 Section 9.10 for federally chartered.)

Any forms contained in this pamphlet may be duplicated.

Questions pertaining to the contents of this pamphlet may be addressed to:

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The State Treasurer's web site is www.treasurer.state.nc.us. This pamphlet and forms are available for downloading.

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**GENERAL EXPLANATION OF 20 NCAC 7
(Collateralization Rules For Public Deposits)**

Authorization. North Carolina General Statutes authorize and require the State Treasurer and the Local Government Commission to prescribe such rules as may be necessary to regulate the collateralization of certain public deposits in North Carolina banks and savings institutions. These rules are codified in the North Carolina Administrative Code - Title 20, Chapter 7. The April 1, 1994 amendments incorporated the Federal Deposit Insurance Corporation's (FDIC) Policy Statement dated March 23, 1993, which specifies the requirements for creation of an enforceable security interest in any pledged collateral securities. This policy statement resulted from the North Arkansas v. Barrett, 962 F.2d (8th Cir. 1992) court decision, and clarifies the FDIC's policy on enforcing the requirements of Section 11(e) of the Federal Deposit Insurance Act, as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). The April 1994 amendments to the rules also incorporated compliance with any requirements of the North Carolina Uniform Commercial Code in regards to the creation of an enforceable security interest.

Public Deposits. Public deposits covered under the rules include the deposits of:

<u>Entity</u>	<u>Statutory Reference</u>
The State Treasurer	G.S. 147-69 and 79
The North Carolina State Bar	G.S. 84-34.1
University System's Medical Schools	G.S. 116-36.1(g)(7) and 36.1(h)
Local School Administrative Units	G.S. 115C-443 and 444
Community Colleges	G.S. 115D-55(b) and 56(b)
Local ABC Boards	G.S. 18B-702(d)
Local Governmental Units	G.S. 159-30 and 31

Examples of a local governmental unit include:

Cities and Towns	Regional Hospitals
Counties	Area Mental Health Centers
Public Hospitals	District Health Departments
Public Airports	Drainage Districts
Public Libraries	District Water and Sewer Authorities
Public Housing Authorities	Councils of Governments

Clerks of Superior Court. Funds administered by the 100 Clerks of Superior Court are public deposits, but not public deposits as defined under 20 NCAC 7, and therefore are not subject to the rules. However, collateralization of these deposits is required by G.S. 7A-112. The securities which may be used to collateralize the Clerks of Superior Court's deposits are limited to bonds of the United States government or of the State of North Carolina, or of counties and municipalities of North Carolina whose bonds have been approved by the Local Government Commission. The North Carolina Administrative Office of the Courts (AOC) establishes the rules pertaining to the Clerks' deposits and has promulgated security agreements (Form AOC-A-911M) and escrow agent agreements (Form AOC-A-912M) for use by the Clerks. The forms are available either from the Clerk's Office or AOC. (Since the Clerks are not subject to 20 NCAC 7, their deposit accounts are not eligible to be included in the State Treasurer's Pooling Method of collateralization.)

Funds Not Subject to Collateralization. Being a public agency in itself does not necessarily require that funds of the public agency be collateralized. Based upon opinions issued by the North Carolina Attorney General's Office, there must be a specific statute authorizing the collateralization of deposits of a public agency. In the absence of express statutory authorization, any such pledge would likely be considered an invalid pledge and be of no value to the pledgee in the event of a failure. Therefore, before pledging its assets, a financial institution should be assured of its authority to do so. On page 6 of this pamphlet is a listing of the statutory references which may be used to determine whether a particular entity's deposits

may be collateralized. A resolution passed by an entity's board of directors or trustees, in the absence of statutory authority, is not sufficient authority to require/provide collateral. Any entity (public, private, or non-profit) requiring an institution to pledge securities when there is no statutory authorization is relying upon false security.

Public Depositor Definition. The term "public depositor" as defined in the rules can be either the State Treasurer in the case of State funds, or the person charged with the custody of public deposits of a participating unit. This is the official custodian of funds for a "public unit account" recognized by the Federal Deposit Insurance Act (12 C.F.R. 330.14). (See Rule .0102)

Public Deposit Definition. The term "public deposit" as defined in the rules includes the deposits of all public depositors and consists of two categories—demand and time. Time deposits are generally any deposits on which interest is paid and include savings accounts, negotiable order of withdrawal (NOW) accounts, money market deposit accounts (MMDA), certificates of deposit, and savings certificates. Although NOW and MMDA accounts are normally reported on certain federal reporting forms as transactional accounts along with checking accounts, for insurance coverage purposes they are considered time deposits (12 C.F.R. 204.2 and 12 C.F.R. 329.1). Repurchase agreements, accounts with the North Carolina Capital Management Trust, and State Treasurer Short Term Investment Fund (STIF) accounts are not deposits to be insured or secured since they are considered investments. (See Rule .0102)

FDIC Insurance Coverage. FDIC regulations (12 C.F.R. 330.14) provide insurance coverage to the official custodian of a public unit (public depositor), not to the public unit itself. Additionally, in the case of public unit accounts, FDIC allows \$100,000 of coverage on all demand deposits combined and a separate \$100,000 on all time deposits combined. It is therefore possible for a public depositor to have up to \$200,000 of total insurance coverage. (See Rule .0202)

Notification of New Accounts. Upon the opening of every new deposit account, it is the responsibility of the public depositor to notify the depository either orally or in writing that the deposits in said deposit account are public deposits subject to the collateralization rules. The depository should develop procedures to identify public deposits when new accounts are opened in order that the balances may be included in determining total balances to be collateralized (on a timely basis). (See Rule .0103)

Annual Notification Report. To assist the depository in keeping its records current, as of June 30 of each year, the public depositor is required to provide each depository Form INV-91 "Notification of Public Deposit," which lists the current account names and numbers of all its public deposit accounts. The public depositor sends a duplicate copy of this completed form to the State Treasurer's Office to assist in the monitoring process. Blank forms are supplied to the public depositors by the State and Local Government Finance Division. (See Rule .0103)

Depository's Responsibility. It is the responsibility of the depository to provide adequate collateral for all deposits in excess of any insurance coverage for all accounts which it has been notified are public deposit accounts. If the depository has not received notification for a questionable account, it may forward the public depositor a written request for verification of the deposit. (See Rules .0107, .0103)

Two Methods of Securing Deposits. There are two methods a depository may choose to secure its uninsured public deposit accounts. The first is the "Dedicated Method" (formerly Option 1), which each public depositor's deposits are secured separately, and which requires the establishing of a separate escrow account for each public depositor. The second is the "Pooling Method" (formerly Option 2), under which all public depositors' deposits are secured through a single escrow account established by the depository with the State Treasurer for the benefit of the State and the participating units. The Pooling Method is generally beneficial for a depository which has a large number of public depositors and desires to limit its dealings to only the State Treasurer's Office in administering the collateralization process. On page 11 of this pamphlet is a comparison of the two options. (See Rule .0104)

Public Housing Authorities Exception. The deposits of Public Housing Authorities are not eligible to be included in the Pooling Method. These deposits are to be collateralized under the Dedicated Method, and

in accordance with any further restrictions required by regulations of the United States Department of Housing and Urban Development (HUD). Such restrictions generally allow only certain types of eligible collateral, such as U.S. treasury and agency securities. (See Rule .0104)

Selection of Method - Depository's Choice. The depository may select only one method for all public depositors. It cannot use one method for some units and another method for others (with the exception that Public Housing Authorities must be included only under the Dedicated Method). Unless the depository has taken the necessary action to initiate the Pooling Method, by default it is under the Dedicated Method. (See Rules .0104, .0105)

Monitoring Responsibility. If a depository has chosen the Dedicated Method, the responsibility for monitoring the depository's compliance is that of the public depositor. The public depositor is required to maintain a record of all securities pledged at all times. Other responsibilities include ensuring that the proper security agreements and escrow agent agreements have been executed, and approving the pledging and releasing of all securities as requested by the depository. If a depository has chosen the Pooling Method, the State Treasurer is responsible for monitoring the depository's compliance. The depository is required to provide certain reports to the State Treasurer, quarterly and annually, to accommodate this central monitoring process. The State and Local Government Finance Division periodically publishes a listing of all depositories that have chosen the Pooling Method. (See Rules .0104, .0202, .0304, .0305, .0501, .0502, .0505)

Exercising the Pooling Method. Rule .0105 outlines in detail the steps a depository must take in order to convert from the Dedicated Method to the Pooling Method. The steps include submitting the following to the State Treasurer:

- 1) Letter of intent indicating the desired effective date;
- 2) Executed Form INV-93A, "Security Agreement with Resolution";
- 3) Executed INV-93B, "Escrow Agent Agreement" (Not required if the Federal Reserve Bank is the escrow agent);
- 4) Completed Form INV-99, "Selected Financial Data Report" (A low capital adequacy ratio may preclude the approval to exercise the Pooling Method); and
- 5) Completed Form INV-97, "Annual Report on Public Deposits."

In addition, a completed Form INV-92, "Election of Pooling Method," must be sent to each of its public depositors notifying them of its election. A duplicate of this form must be provided to the State Treasurer. The depository may pledge the required collateral to the State Treasurer in one of two ways, making such indication on the Form INV-92. When submitting Form INV-92, the depository should also include Form INV-95, "Request for Collateral Pledge/Release," requesting the public depositor to authorize either:

- 1) The release of any collateral currently pledged to the public depositor to be simultaneously repledged to the State Treasurer; or
- 2) The release of any collateral without substitution, as the depository has previously pledged sufficient collateral to the State Treasurer. (See Rule .0105)

Security Agreements. The FDIC's Policy Statement dated March 23, 1993, specifies the requirements which must be met in order to create an enforceable security interest in pledged collateral securities. One of the requirements is that a security agreement be executed in duplicate between the public depositor and the depository, and that it be approved by a resolution passed by either the depository's board of directors or loan committee. The security agreement to be executed depends upon which method the depository has chosen:

Pooling Method	—	INV93A
Dedicated Method	—	INV94A

(See Rule .0305)

Escrow Agent Agreements. Eligible escrow agents include the Federal Reserve Bank, the Federal Home Loan Bank, and any commercial bank having authority to conduct a trust business, provided the bank is not an affiliate of the depository. For each commercial escrow agent used, and in the case of the Federal Home Loan Bank, an “Escrow Agent Agreement” is to be executed in triplicate by each of the parties. Securities pledged with the Federal Reserve Bank are in accordance with Circular 16 of the Federal Reserve Bank and therefore do not require an escrow agent agreement. However, the Federal Reserve Bank’s signature cards (pink) are to be executed. The escrow agent agreement to be executed depends upon which method the depository has chosen:

Pooling Method — INV93B
Dedicated Method — INV94B
(See Rules .0301, .0302, .0303)

Calculating Amount of Collateral to be Pledged. Under the Dedicated Method, the amount of required collateral shall be based on actual current balances (both time and demand). Under the Pooling Method, the amount for each public depositor’s time deposits shall be based on actual current balances, while the amount for demand deposits shall be based on an approved averaging method. All securities shall be valued at current market value, and at a minimum shall equal 100% of the amount required to be collateralized. However, the public depositor in the case of the Dedicated Method or the State Treasurer in the case of the Pooling Method may, at his discretion, require the market value of the securities pledged to be 10% greater than the 100% minimum, should he feel circumstances indicate an apparent risk. Additionally, any depository using the Pooling Method which does not maintain a 10% excess, although not required to maintain such cushion, must submit reports (Form INV-96) to the State Treasurer on a monthly basis as opposed to a quarterly basis. (See Rules .0202, .0505)

School Funds. The amount of collateral required to be pledged for deposits of individual schools within the same system are to be calculated separately from the deposits of the school administrative unit. The school finance officer of the administrative unit is considered the “official custodian” under FDIC regulations and is therefore allowed the maximum insurance coverage on each type of deposit, both demand and time. However, the treasurers of the individual schools are each allowed only \$100,000 for both demand and time accounts combined. The school finance officer of the school administrative unit is charged with the public depositor’s responsibility of administering the collateral requirements for the funds of all schools within the system. This responsibility includes notifying the depository of openings of new accounts, filing the required reports, and in the case of the Dedicated Method, monitoring the collateral needs within one collateral account in the name of the school administrative unit. As such, he/she is the person to whom all the required collateral is to be pledged under the Dedicated Method. In the case of the Pooling Method, where the depository is required to submit an annual report on public deposits, the report should indicate the required deposit and insurance amounts for the school administrative unit’s accounts, separate from the total amounts for each individual school within the system. (See Rule .0202)

Pledging/Releasing Collateral. All pledges, releases, and substitutions shall be initiated by the Form INV-95, “Request for Collateral Pledge/Release.” The form should be prepared in triplicate, the original for the escrow agent (addressee), the duplicate for the pledgee (either State Treasurer or public depositor), and the triplicate for the depository (preparer). If the transaction involves a release or a substitution, the original should be forwarded to the pledgee for approval before being sent to the escrow agent for action. The form should indicate the percentage of excess collateral pledged after the transaction is completed. Escrow agents must provide the pledgee a written advice of all completed transactions. (See Rule .0304)

Reporting Under Dedicated Method. A depository using the Dedicated Method is required to report to each public depositor the total par and market values of securities pledged at the end of each calendar quarter. Annually, as of June 30, it is to file with each public depositor INV-98, “Annual/Quarterly Report on Collateral for Public Deposits.” This report is a detailed listing of collateral securities pledged at each escrow bank for that public depositor. This report may be requested by the public depositor to be filed more frequently, and may be used to accommodate the quarterly reporting. The more frequent reporting is generally appropriate whenever securities which have periodic principal reductions are pledged. (See Rule .0501)

Reporting Under Pooling Method. A depository using the Pooling Method is required to file INV-96, “Quarterly Report on Public Deposits,” with the State Treasurer at the end of each calendar quarter. This report summarizes all accounts secured and the collateral pledged to cover the accounts. Along with the quarterly report, the depository is to file INV-99, “Selected

Financial Data,” which is a report containing financial data from its quarterly Call Report. The depository may elect to file Form INV-96/99, which is a combination report of Form INV-95 and INV-99. Annually, as of June 30, it is required to file with the State Treasurer INV-97, “Annual Report on Public Deposits,” and INV-98, “Annual/Quarterly Report on Collateral for Public Deposits.” These two reports provide the detail figures supporting the summary figures provided on the quarterly report. Report INV-98 may be requested by the State Treasurer to be filed more frequently (quarterly). The more frequent reporting is generally appropriate whenever securities which have periodic principal reductions are pledged. (See Rule .0502)

Selected Financial Data Report. A depository using the Pooling Method must file an INV-99, “Selected Financial Data Report” with the State Treasurer quarterly as referenced above. Additionally, any depository using the Dedicated Method and which has State funds on deposit, must also file this report with the State Treasurer quarterly. (See Rule .0504)

Monthly Reporting. Because monitoring of a depository using the Pooling Method is periodic in nature, and because calculation of demand account balances is based on averages, it is desirable to encourage those depositories to provide a cushion of excess collateral. Therefore, for those depositories maintaining less than a 10% excess cushion, monthly reporting will be required. A depository can avoid monthly reporting by maintaining 10% excess collateral at all times. In addition, a depository which is repeatedly late in filing its quarterly report or files a report with a material error will be required to report on a monthly basis. Such monthly reporting directives will be issued by the State Treasurer and will be effective for a period of six months, after which time the depository may resume quarterly reporting. However, subsequent violations may extend the monthly reporting requirement. (See Rule .0505)

Surety Bonds. Surety bonds with a corporate surety may be substituted in lieu of part or all of the collateral securities required to be pledged. Rule .0203 outlines in detail the conditions under which they may be used. Eligible providers of surety bonds must be listed in Circular 570 published annually, as of July 1, by the United States Department of the Treasury. It may be found at web site <http://fms.treas.gov/c570/index.html>. An insurance company desiring to offer surety services must submit the surety bond to the State Treasurer for prior approval. A list of the insurance companies currently approved by the State Treasurer is available. (See Rule .0203)

STATUTORY REFERENCES

DEPOSITS OF THE STATE TREASURER:

§ 147-79(a) — The amount of funds deposited by the State Treasurer in an official depository shall be adequately secured by deposit insurance, surety bonds, or investment securities of such nature, in such amounts, and in such manner, as may be prescribed by rule or regulation of the State Treasurer with the approval of the Governor and Council of State. No security is required for the protection of funds remitted to and received by a bank or trust company designated by the State Treasurer under G.S. 142-1 and acting as paying agent for the payment of the principal of or interest on bonds or notes of the State.

DEPOSITS OF LOCAL GOVERNMENT UNITS AND PUBLIC AUTHORITIES:

§ 159-31(b) — The amount of funds on deposit in an official depository or deposited at interest pursuant to G.S. 159-30(b) shall be secured by deposit insurance, surety bonds, letters of credit issued by a Federal Home Loan Bank, or investment securities of such nature, in a sufficient amount to protect the local government or public authority on account of deposit of funds made therein, and in such manner, as may be prescribed by rule or regulation of the Local Government Commission. When deposits are secured in accordance with this subsection, no public officer or employee may be held liable for any losses sustained by a local government or public authority because of the default or insolvency of the depository. No security is required for the protection of funds remitted to and received by a bank or trust company acting as fiscal agent for the payment of principal and interest on bonds or notes, when the funds are remitted no more than 60 days prior to the maturity date.

DEPOSITS OF THE NORTH CAROLINA BAR:

§ 84-34.1 — Deposits of the North Carolina Bar, its boards, agencies, and committees shall be secured as provided in G.S. 159-31(b).

DEPOSITS OF LOCAL SCHOOL ADMINISTRATIVE UNITS OR INDIVIDUAL SCHOOLS:

§ 115C-444(b) — Money on deposit in an official depository or deposited at interest pursuant to G.S. 115C-443(b) shall be fully secured by deposit insurance, surety bonds, or investment securities of such nature, in such amounts, and in such manner, as may be prescribed by rule or regulation of the Local Government Commission. When deposits are secured in accordance with this subsection, no public officer or employee may be held liable for any losses sustained by a local school administrative unit because of default or insolvency of the depository.

DEPOSITS OF COMMUNITY COLLEGES:

§ 115D-58.7(b) — Money deposited in an official depository or deposited at interest pursuant to G.S. 115D-58.6(b) shall be secured in the manner prescribed in G.S. 159-31(b). When deposits are secured in accordance with this subsection, no public officer or employee may be held liable for any losses sustained by an institution because of the default or insolvency of the depository.

DEPOSITS OF ABC BOARDS:

§ 18B-702(d) — Deposits and Investments. A local board may deposit moneys at interest in any bank or trust company in this State in the form of savings accounts or certificates of deposit. Investment deposits shall be secured as provided in G.S. 159-31(b)...

DEPOSITS OF UNIVERSITY MEDICAL SCHOOLS:

§ 116-36.1(g)(7) — Moneys received by an institution in respect to fees and other payments for services rendered by medical, dental or other health care professionals under a contractual agreement between the institution and a hospital or other health provider.

§ 116-36.1(h) — Notwithstanding the provisions of subsection (b) of this section, the Board may designate as the official depository of the funds identified in subsection (g)(7) of this section one or more banks or trust companies in this State. The amount of funds on deposit in an official depository shall be fully secured by deposit insurance, surety bonds, or investment securities of such nature, in such amounts, and in such manner as is prescribed by the State Treasurer for the security of public deposits generally.

SUMMARY OF RESPONSIBILITIES

Public Depositor:

1. Upon opening an account with a depository, ascertain the method used by the depository to collateralize the public deposits. Stay informed of any change in methods as the result of conversions to a different method or as the result of merger of depositories.
2. Notify each depository whenever a new deposit account is opened or a certificate of deposit is purchased, that the account is a public deposit account subject to the collateralization requirements.
3. File a "Notification of Public Deposit" (INV-91) with each depository, with a copy to the State Treasurer, as of June 30 of each year.
4. In the case of depositories using the Dedicated Method, determine that a "Security Agreement With Resolution" (INV-94A) is executed with each. (Resolution must be passed by depository's board of directors or loan committee.)
5. In the case of depositories using the Dedicated Method, determine that an "Escrow Agent Agreement" (INV-94B or Federal Reserve Bank's signature card) is executed with each.
6. In the case of depositories using the Dedicated Method, maintain a record of the securities pledged by each depository for monitoring purposes. If securities having periodic principal pay downs are pledged, consideration should be given to record their decline in "outstanding principal" balances.
7. In the case of the Dedicated Method, periodically check the market values of the collateral pledged to verify at least 100% of the amount required to be collateralized. The frequency of checking the market values would depend upon the amount of excess collateral pledged, the types of collateral pledged, and the volatility of market conditions.
8. In the case of depositories using the Dedicated Method, sign "Request for Collateral Pledge/Release" forms (INV-95), authorizing the release or substitution of collateral whenever requested by the depository, provided sufficient collateral remains pledged after the transaction is effected.
9. In the case of depositories using the Dedicated Method, report the amount of collateral pledged by each depository on the semi-annual reports (LGC-203) filed with the Local Government Commission.

Depository:

1. Collateralize all uninsured deposits of public depositors through an eligible escrow agent(s), using either the Dedicated Method or the Pooling Method.
2. Ensure that the proper security agreement with resolution (INV-93A or INV-94A) is executed with the State Treasurer or with each public depositor. (Resolution must be passed by depository's board of directors or loan committee.)
3. Ensure that the proper escrow agent agreement (INV-93B, INV-94B, or Federal Reserve Banks signature card) is executed for each escrow account.
4. Pledge only securities that are eligible collateral, and in adequate amounts.
5. Maintain valuation of all securities pledged at market value, including the monitoring of securities which may have periodic principal paydowns.

6. Provide a means for relaying information to the home office from each branch office which may receive notifications of public deposits from public depositors.
7. Annually (as of June 30), verify the "Notification of Public Deposit" (INV-91) received from each public depositor; determine that all reported accounts are being monitored for collateralization.
8. Use the "Request for Collateral Pledge/Release" form (INV-95) when instructing the escrow agent to pledge, release, or substitute collateral securities. The pledgee must approve all releases and substitutions before being sent to the escrow agent. Cusip numbers must be used when describing the securities.
9. File the required quarterly and annual reports in a timely manner.

State Treasurer:

1. In the case of depositories using the Pooling Method, determine that a "Security Agreement with Resolution" (INV-93A) is executed with each depository. (Resolution must be passed by depository's board of directors or loan committee.)
2. In the case of depositories using the Pooling Method, determine that an "Escrow Agent Agreement" (INV-93 or Federal Reserve Bank signature card) is executed with each escrow agent.
3. For monitoring purposes, maintain a record of the securities pledged by each depository having an escrow account for the State Treasurer.
4. When the State Treasurer is the pledgee, sign "Request for Collateral Pledge/Release" forms (INV-95), authorizing the release or substitution of collateral whenever requested by the depository, provided sufficient collateral remains pledged after the transaction is effected.
5. Maintain a file by depository of all "Election of Pooling Method" (INV-92) forms received from depositories electing the Pooling Method, indicating the participating units included in the depository's collateral pool.
6. Maintain a current file of the "Notification of Public Deposit" (INV-91) forms received from the public depositors to assist in monitoring purposes.
7. Respond to requests from public depositors' independent auditors confirming whether or not a public depositor's deposits in a depository using the Pooling Method are secured through the State Treasurer, and whether or not adequate collateral is (was) pledged.
8. For monitoring purposes, receive and review quarterly and annual reports from depositories using the Pooling Method.

Escrow Agent:

1. Provide escrow account services in accordance with the escrow agent agreements and ensure that the proper agreement (INV-93B, INV-94B, or Federal Reserve Bank signature card) has been executed for each escrow account.
2. Take appropriate action upon receiving a "Request for Collateral Pledge/Release" (Form INV-95) from a depository. The pledgee (State Treasurer or public depositor) must authorize all releases and substitutions of all securities, including the release of proceeds from maturities.
3. Send written advices of all completed transactions on a timely basis to the pledgee (State Treasurer or public depositor).

Public Depositor's Independent Auditor:

1. Verify whether the depositories used by the public depositor are under the Dedicated Method or Pooling Method by checking the most recent list published by the Local Government Commission.
2. Verify for each depository using the Dedicated Method that the proper security agreement (INV-94A) has been executed and that it has been approved by a resolution of the depository's board of directors or loan committee.
3. Verify for each depository using the Dedicated Method that the proper escrow agreement (INV-94B or Federal Reserve Bank signature card) has been executed, that an adequate amount of eligible securities is pledged, and that the public depositor has a record of the securities pledged.
4. As of June 30 of each year, send to the State Treasurer a letter for each depository securing the public depositor's deposits under the Pooling Method, asking for confirmation of the public depositor's inclusion in the depository's pool of collateral established with the State Treasurer (only if deemed necessary). Since the annual reports due from the depositories are not received by the State Treasurer's Office until after July 31, the Treasurer's Office normally cannot respond to the confirmations until sometime in August.

Local Government Commission:

1. Periodically provide participating units a listing of all depositories which have elected the Pooling Method.
2. Provide the participating units blank "Notification of Public Deposit" (INV-91) forms, to be filed with the depositories as of June 30 annually.
3. Provide guidance to the participating units in fulfilling their collateralization responsibilities.
4. Monitor compliance by certain participating units (governmental units) through the review of semi-annual LGC-203 reports.

ELIGIBLE COLLATERAL SECURITIES PURSUANT TO 20 NCAC 7 & N.C. GENERAL STATUTES

The following types of securities are eligible for pledging as security provided that the securities are eligible for investment by the depository and can be included at full value in the reserves of the depository:

- (1) Obligations of the United States of America;
- (2) Obligations of any agency or instrumentality of the United States of America if the payment of such obligation is fully guaranteed by the United States of America;
- (3) Obligations of the State of North Carolina, the N.C. Medical Care Commission, the N.C. Housing Finance Agency, the N.C. State Education Assistance Authority and the component institutions of the University of North Carolina;
- (4) Bonds or notes of any North Carolina local government or public authority issued with the approval of the Local Government Commission and not currently in default on payment of interest or principal on any of its bonds or notes;
- (5) General obligations bonds of other states whose full faith and credit are pledged to the payment of principal and interest thereof;
- (6) Bonds, notes and other direct obligations of the Federal Financing Bank, the Farm Credit System, the Federal Land Banks, the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Housing Administration, the Farmers Home Administration, the United States Postal Service, the Export-Import Bank, the International Bank for the Reconstruction and Development, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, and the Student Loan Marketing Association.
- (7) Bonds or notes of a housing authority established or to be established pursuant to Article 1, Chapter 157 of the General Statutes of North Carolina or issued by any public housing authority or agency in the United States, when such bonds and notes are secured by a pledge of an annual contribution to be paid by the United States government or any agency thereof, or bonds or notes which may be issued by a not-for-profit corporate agency of a housing authority secured by rentals payable pursuant to Section 23 of the United States Housing Acts of 1937, as amended;
- (8) Prerefunded bonds and bonds escrowed to maturity—if the issuer shall have applied for and received a re-rating of “AAA” by at least one nationally recognized rating service by reason of U.S. Government securities being escrowed with the trustee;
- (9) Special obligation bonds—if they were originally rated “AAA” by reason of U.S. Government securities being escrowed with the trustee;
- (10) Prime quality commercial paper bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligation;
- (11) Bills of exchange or time drafts drawn on and accepted by a commercial bank and eligible for use as collateral by member banks in borrowing from a Federal Reserve Bank, provided that the accepting bank or its holding company is either: (a) incorporated in the State of North Carolina; or (b) has outstanding publicly held obligations bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligation;
- (12) Letters of credit issued by a Federal Home Loan Bank. (Senate Bill 417, 1999 Session)

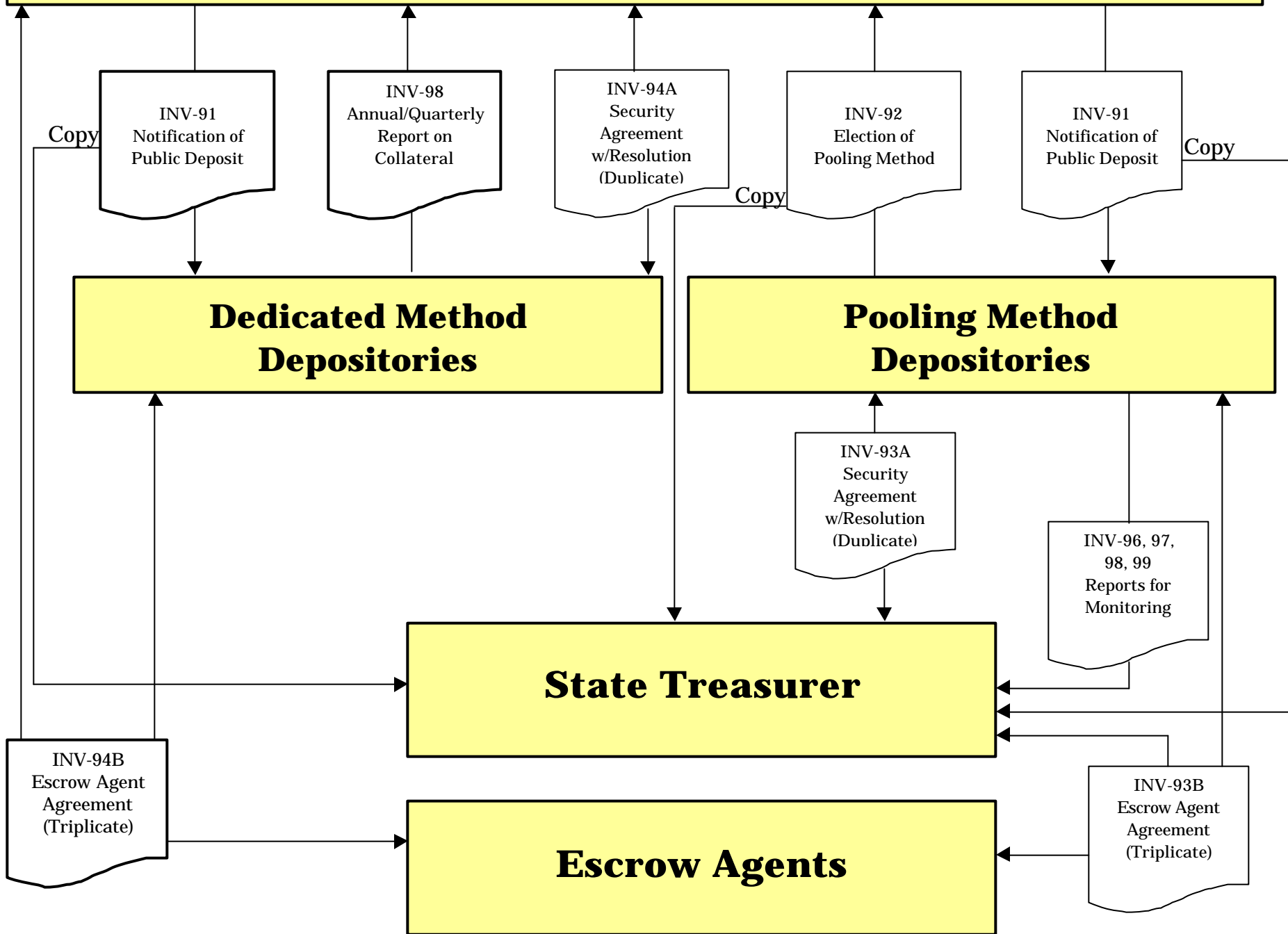
In case of questions, it is the responsibility of the depository to demonstrate that the security to be pledged does fulfill the requirements of this Rule.

Surety bonds with a corporate surety may be substituted in lieu of part or all of the collateral required, pursuant to Rule .0203.

**COMPARISON OF METHODS FOR
COLLATERALIZING PUBLIC DEPOSITS**

	Dedicated Method (Formerly Option 1)	Pooling Method (Formerly Option 2)
Responsibility for Collateralization	Depository	Depository
Responsibility for Monitoring Depository	Public Depositor	State Treasurer
Security Agreement With Resolution	With Public Depositor (INV-94A)	With State Treasurer (INV-93A)
Escrow Agreement for Commercial Escrow or FHLB	With Public Depositor (INV-94B)	With State Treasurer (INV-93B)
Escrow Agent Agreement for Federal Reserve Bank	Not Required (Cir. 16) Signature Card Instead	Not Required (Cir. 16) Signature Card Instead
Signature Card for Federal Reserve Bank	Signed by Public Depositor	Signed by State Treasurer
Quarterly Report on Deposits from Depository	Not Required	To State Treasurer (INV-96)
Quarterly Report of Collateral from Depository	To Public Depositor (Letter Form)	To State Treasurer (INV-98)
Selected Financial Data Report from Depository	Not Required Unless State Funds	To State Treasurer (INV-99)
Annual Report on Public Deposits from Depository as of June 30	Not Required	To State Treasurer (INV-97)
Annual Report on Collateral from Depository as of June 30	To Public Depositor	To State Treasurer (INV-98)
Request for Collateral Pledge/Release Form Required (INV-95)	Authorization by Public Depositor	Authorization by State Treasurer
Reports Required if Deposits do not Exceed FDIC Insurance Coverage	No	Yes
Notification of Public Deposit from Public Depositor to Depository (INV-91)	June 30 with Copy to State Treasurer	June 30 with Copy to State Treasurer
“Election of Pooling Method” Form Submitted to Public Depositor by Depository (INV-92)	No	At Conversion with Copy to State Treasurer
Time Deposit Calculations	Actual Daily Balances	Actual Daily Balances
Demand Deposit Calculations	Actual Daily Balances	Average Daily Balances
Valuing of Securities Pledged	Market Value	Market Value
Minimum Amount of Collateral	100%	110% to Avoid Monthly Reporting

Public Depositors



FORMS AND REPORTS FOR PROCEDURAL COMPLIANCE

- FORM INV-91** “**NOTIFICATION OF PUBLIC DEPOSIT**”—Prepared in duplicate as of June 30 of each year by each public depositor to identify public deposits to the depository. One copy is sent to the depository, and one copy is sent to the State Treasurer.
- FORM INV-92** “**ELECTION OF POOLING METHOD**”—Prepared in duplicate by a depository converting from the Dedicated Method to the Pooling Method to notify each public depositor of its intention to secure all public deposits through the State Treasurer. One copy is sent to the public depositor, and one copy is sent to the State Treasurer.
- FORM INV-93A** “**SECURITY AGREEMENT WITH RESOLUTION (POOLING METHOD)**” —Executed in duplicate by the State Treasurer and the depository and used to create an enforceable security interest in any collateral pledged by the depository to the State Treasurer. Agreement must be approved by a resolution passed by the depository’s board of directors or loan committee.
- FORM INV-93B** “**ESCROW AGENT AGREEMENT (POOLING METHOD)**”— Executed in triplicate by the State Treasurer, the depository, and the escrow bank agent and used by a depository to establish an escrow account to secure the deposits of all public depositors through the State Treasurer. Applicable to commercial escrow banks and the Federal Home Loan Bank, but not the Federal Reserve Bank.
- FORM INV-94A** “**SECURITY AGREEMENT WITH RESOLUTION (DEDICATED METHOD)**”—Executed in duplicate by the public depositor and the depository and used to create an enforceable security interest in any collateral pledged by the depository to the public depositor. Agreement must be approved by a resolution passed by the depository’s board of directors or loan committee.
- FORM INV-94B** “**ESCROW AGENT AGREEMENT (DEDICATED METHOD)**”—Executed in triplicate by the depository, the escrow bank agent, and the public depositor and used by a depository using the Dedicated Method to establish an escrow account to secure the public depositor’s deposits in a separate escrow account. Applicable to commercial escrow banks and the Federal Home Loan Bank, but not the Federal Reserve Bank.
- FORM INV-95** “**REQUEST FOR COLLATERAL PLEDGE/RELEASE**” —Prepared in triplicate by the depository to instruct the escrow agent of all pledges, releases, and substitutions to effect for each escrow account. The original is for the escrow agent, the duplicate for the pledgee (State Treasurer or public depositor) and the triplicate for the depository. In the case of a release or substitution, the form must be signed by the pledgee before being acted upon by the escrow agent.
- FORM INV-96** “**QUARTERLY REPORT ON PUBLIC DEPOSITS**”—Prepared quarterly by all depositories using the Pooling Method. Report is due 30 days following the end of each calendar quarter, and is to be filed with the State Treasurer. Report is required to be filed monthly if the depository does not maintain at least 10% excess collateral.
- FORM INV-97** “**ANNUAL REPORT ON PUBLIC DEPOSITS**” —Prepared by all depositories using the Pooling Method. Report is a listing of all public depositors, and for each depositor, the amounts on deposit for demand and time accounts, and the insurance amount on each type. Report is to be dated June 30 and is due by July 31.
- FORM INV-98** “**ANNUAL/QUARTERLY REPORT ON COLLATERAL FOR PUBLIC DEPOSITS**” —Prepared by all depositories having any public deposits requiring collateralization. Report is a listing of the securities pledged as collateral with each escrow agent. Depositories using the Dedicated Method forward the reports to the individual public depositors, and depositories using the Pooling Method forward reports to the State Treasurer. Report is to be dated June 30 and is due by July 31. The report may be requested to be filed more frequently (quarterly).
- FORM INV-99** “**SELECTED FINANCIAL DATA**” —Prepared by all depositories using the Pooling Method and those depositories using the Dedicated Method which have State funds. Report is due 30 days following the end of each calendar quarter, and is to be filed with the State Treasurer. Report contains data extracted from its quarterly call report.
- FORM INV-96/99** “**COMBINED QUARTERLY REPORT ON PUBLIC DEPOSITS AND SELECTED FINANCIAL DATA**” — May be used in lieu of filing separate forms INV-96 and INV-99.

NOTE: The depository may substitute its own formats for Forms INV-95, INV-97, and INV-98 provided the formats are substantially the same in the content and order of presentation.

Copies of the forms may be found in the back of this publication as Exhibits.

**NORTH CAROLINA ADMINISTRATIVE CODE
(EXCERPT)**

**TITLE 20
DEPARTMENT OF STATE TREASURER**

**CHAPTER 7
COLLATERALIZATION OF DEPOSITS**

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Chapter 7 — Collateralization of Deposits

Section .0100 — General

.0101 GENERAL INFORMATION

- (a) This Chapter sets for the manner in which the official depositories shall provide the collateralization of the uninsured balances on deposit in accordance with provisions in G.S. 18B-702(d), G.S. 115C-443 and 444, G.S. 115D-58.6(b) and 58.7(b), and G.S. 147-69.1 and 79, G.S. 159-30 and 31, G.S. 116-36.1(h), and G.S. 84-34.1.
- (b) All correspondence to the State Treasurer under this Chapter shall be addressed to: Division of Investment and Banking, Department of State Treasurer, 325 North Salisbury Street, Raleigh, NC 27603-1385.

History Note: Statutory Authority G.S. 115C-444(b); 147-79; 159-31(b);
Eff. August 1, 1980;
Readopted with Change Eff. February 1, 1982;
Amended Eff. April 1, 1994; August 1, 1987.

.0102 DEFINITION OF TERMS

The words and phrases defined in this Rule will have the meanings indicated when used in this Chapter, unless the context clearly requires another meaning:

- (1) “Affiliate” means “affiliate” as defined in 12 USC 371c(b)(1) including subsequent amendments.
- (2) “Demand Deposits” are all deposits that are not time deposits as defined in these Rules, i.e. all non-interest bearing deposits.
- (3) “Deposit Accounts” include all demand and time deposits as defined in these Rules.
- (4) “Deposit Insurance” means the insurance provided by the Federal Deposit Insurance Corporation.
- (5) “Depository” means a financial institution into which the State Treasurer or a participating unit is empowered to deposit money with or without interest, and which is required by law to secure the deposits with deposit insurance and collateral securities.
- (6) “Governmental Unit” includes any city, town, county, special district, public hospital, public authority, whose deposits are required to be secured.
- (7) “Participating Unit” means any governmental unit, any city or county school administrative unit, any community college, any local ABC board, any university depositing moneys pursuant to G.S. 116-36(h), and the State Bar of North Carolina.
- (8) “Public Depositor” means the State Treasurer or the person charged with the custody of public deposits of a participating unit. In the case of special funds of the individual schools of a city or county school administrative unit, this person is the school finance officer.
- (9) “Public Deposits” means all deposits made to the account of the State Treasurer and all deposits made by a participating unit in any depository, including those held by the depository in an escrow capacity.
- (10) “State Funds” means deposits to the account of the State Treasurer.
- (11) “State Treasurer” means the State Treasurer of North Carolina.
- (12) “Time Deposits” means interest-bearing deposits including savings accounts, negotiable order of withdrawal (NOW) accounts, and money market deposit accounts (MMDA), and certificates of deposits and savings certificates, both negotiable and non-negotiable.

History Note: Statutory Authority G.S. 115C-444(b); 147-79; 159-31(b);
Eff. August 1, 1980;
Readopted with Change Eff. February 1, 1982;
Amended Eff. April 1, 1994; September 1, 1988; June 1, 1984; November 1, 1983.

.0103 NOTIFICATION BY DEPOSITOR

- (a) When opening a new deposit account, the public depositor shall provide the depository either written or oral notification that the said deposits in said deposit account are public deposits subject to the collateralization rules.
- (b) As of June 30 of each year, or when requested by the State Treasurer, the public depositor shall provide the depository Form INV-91 “Notification of Public Deposit,” listing the current account names and numbers of all public deposit accounts, and shall provide a duplicate copy to the State Treasurer. Form INV-91 shall be certified by the public depositor that the statements are correct.
- (c) If the depository has any reason to believe that a deposit account for which it has not received a notification pursuant to Paragraph (a) of this Rule is in fact a public deposit, it may forward to the public depositor a written request for

verification of the deposit account. The public depositor shall respond promptly to this request in writing to the depository.

*History Note: Statutory Authority G.S. 115C-444(b); 147-79; 159-31(b);
Eff. August 1, 1980;
Readopted with Change Eff. February 1, 1982;
Amended Eff. April 1, 1994; September 1, 1988.*

.0104 METHODS OF SECURING DEPOSITS

- (a) Deposits of Public Depositors. Except for public deposits of housing authorities each depository shall have the following options:
 - (1) Dedicated Method. To secure all uninsured public deposits of each public depositor separately. The depository shall maintain a record of all securities pledged, with such record being an official record of the depository and made available to examiners or representatives of all regulatory agencies. Each public depositor shall maintain a record of the securities pledged for monitoring purposes.
 - (2) Pooling Method. To secure all uninsured public deposits of every public depositor through a pool of collateral established by the depository with the State Treasurer for the benefit of the State and the participating units. The depository shall maintain a record of all securities pledged, with such record being an official record of the depository and made available to examiners or representatives of all regulatory agencies. The State Treasurer shall maintain a record of the securities pledged for monitoring purposes.
- (b) Notwithstanding the definitions in 20 NCAC 7 .0102, housing authorities established pursuant to G.S. 157, Article 1 and operating under the provisions of the United States Housing Act of 1937, as amended, shall not be eligible to be included in the Pooling Method. The deposits of such housing authorities shall be collateralized under the Dedicated Method, and in accordance with any further restrictions required by regulations of the United States Department of Housing and Urban Development.
- (c) The State Treasurer shall maintain a listing of depositories which have selected the Pooling Method, and shall periodically make such listing available to all participating units.

*History Note: Statutory Authority G.S. 115C-444(b); 147-79; 159-31(b);
Eff. August 1, 1980;
Readopted with Change Eff. February 1, 1982;
Amended Eff. April 1, 1994; November 1, 1993.*

.0105 EXERCISING THE POOLING METHOD

- (a) Unless and until the requirements of this Rule are met, the depository is considered to be under the Dedicated Method.
- (b) If the depository selects the Pooling Method, it shall:
 - (1) Submit to the State Treasurer a letter of intent, indicating the effective date it desires to convert to the Pooling Method, which shall not be prior to the date the requirements of this Rule are met.
 - (2) Submit to the State Treasurer an executed Form INV-93A, "Security Agreement with Resolution," required to comply with Rule .0305 of this Chapter.
 - (3) Submit to the State Treasurer all executed escrow agreements required to comply with Rule .0303(b) of this Chapter.
 - (4) Submit to the State Treasurer Form INV-99, "Selected Financial Data," referred to in Rule .0501(c) of this Chapter.
 - (5) Submit to the State Treasurer Form INV-97, "Annual Report on Public Deposits" referred to in Rule .0502(c) of this Chapter; however, the report shall be for the period immediately preceding the date of the election of the Pooling Method.
 - (6) Submit to each public depositor Form INV-92, "Election of Pooling Method," notifying them that it has opted to pool the collateral of all public deposits through the State Treasurer; and provide the State Treasurer a duplicate copy of all "Election of Pooling Method" forms.
- (c) When Pooling Method is chosen, the depository shall pledge the required amount of collateral with the escrow agent in one of two ways:
 - (1) The depository shall request the public depositor to sign a letter authorizing the escrow agent to release any collateral securities pledged to the participating unit to be simultaneously repledged to the State Treasurer, with the effective date of the release not being prior to the effective date indicated on the Form INV-92. The recognized

effective date shall be the date on which the escrow agent records the pledge of the required collateral securities to the State Treasurer.

- (2) The depository shall first pledge the required amount of collateral securities with the escrow agent to the account of the State Treasurer, and then request the public depositor to sign a letter authorizing the escrow agent to release any collateral securities pledged to the participating unit without substitution. The recognized effective date shall be the effective date indicated on the Form INV-92.
- (d) The public depositor shall promptly sign any authorization letter referred to in Paragraph (c) of this Rule.

*History Note: Statutory Authority G.S. 115C-444(b); 147-79; 159-31(b);
Eff. August 1, 1980;
Readopted with Change Eff. February 1, 1982;
Amended Eff. April 1, 1994; September 1, 1988.*

.0106 FORMS

The following forms shall be promulgated by the State Treasurer and shall be used for the purposes outlined in this Chapter unless specific permission is given to use a substitute:

- (1) INV-91 Notification of Public Deposit
- (2) INV-92 Election of Pooling Method
- (3) INV-93A Security Agreement with Resolution (Pooling Method)
- (4) INV-93B Escrow Agent Agreement (Pooling Method)
- (5) INV-94A Security Agreement with Resolution (Dedicated Method)
- (6) INV-94B Escrow Agent Agreement (Dedicated Method)
- (7) INV-95 Request for Collateral Pledge and/or Release
- (8) INV-96 Quarterly Report on Public Deposits
- (9) INV-97 Annual Report on Public Deposits
- (10) INV-98 Annual Report on Collateral for Public Deposits
- (11) INV-99 Selected Financial Data

*History Note: Statutory Authority G.S. 115C-444(b); 147-79; 159-31(b);
Eff. February 1, 1982;
Amended Eff. April 1, 1994; September 1, 1988.*

.0107 DUTY OF DEPOSITORY

By accepting public deposits, the depository assumes the duty and responsibility of maintaining adequate collateral as provided by law and in accordance with the provisions of this Chapter, for all uninsured deposits in accounts for which the public depositor has notified the depository pursuant to Rule .0103 of this Chapter.

*History Note: Statutory Authority G.S. 115C-444(b); 147-79; 159-31(b);
Eff. September 1, 1988;
Amended Eff. April 1, 1994.*

SECTION .0200 — SECURITIES TO BE DEPOSITED

.0201 ELIGIBLE INVESTMENT SECURITIES

The following types of investment securities are eligible for pledging as security provided that the securities are currently eligible for investment by the depository and can be included at full value in the reserves of the depository:

- (1) Obligations by the United States of America;
- (2) Obligations of any agency or instrumentality of the United States of America if the payment of such obligations is fully guaranteed by the United States of America.
- (3) Obligations of the State of North Carolina, the N.C. Medical Care Commission, the N.C. Housing Finance Agency, the N.C. State Education Assistance Authority and the component institutions of the University of North Carolina;

- (4) Bonds or notes of any North Carolina local government or public authority issued with the approval of the Local Government Commission and not currently in default on payment of interest or principal of any of its bonds or notes;
- (5) General obligations bonds of other states whose full faith and credit are pledged to the payment of principal and interest thereof;
- (6) Bonds, notes and other direct obligations of the Federal Financing Bank, the Farm Credit System, the Federal Land Banks, the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Housing Administration, the Farmers Home administration, the United States Postal Service, the Export-Import Bank, the International Bank for Reconstruction and Development, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, and the Student Loan Marketing Association;
- (7) Bonds or notes of a housing authority established or to be established pursuant to Article 1, Chapter 157 of the General Statutes of North Carolina or issued by any public housing authority or agency in the United States, when such bonds and notes are secured by a pledge of an annual contribution to be paid by the United States government or any agency thereof, or bonds or notes which may be issued by a not-for-profit corporate agency of a housing authority secured by rentals payable pursuant to Section 23 of the United States Housing Acts of 1937, as amended;
- (8) Pre-refunded bonds and bonds escrowed to maturity — the issuer shall have applied for and received a re-rating of “AAA” by at least one nationally recognized rating service by reason of U.S. Government securities being escrowed with the trustee;
- (9) Special obligation bonds — if they were originally rated “AAA” by reason of U.S. Government securities being escrowed with the trustee;
- (10) Prime quality commercial paper bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligation;
- (11) Bills of exchange or time drafts drawn on and accepted by a commercial bank and eligible for use as collateral by member banks in borrowing from a federal reserve bank, provided that the accepting bank or its holding company either:
 - (a) is incorporated in the State of North Carolina; or
 - (b) has outstanding publicly held obligations bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligations.

In case of any questions, it is the responsibility of the depository to demonstrate that the security pledged does fulfill the requirements of this Rule.

*History Note: Statutory Authority G.S. 115C-444(b); 147-79; 159-31(b);
 Eff. August 1, 1980;
 Readopted with Change Eff. February 1, 1982;
 Amended Eff. April 1, 1994; June 1, 1984; November 1, 1983.*

.0202 AMOUNT OF COLLATERAL REQUIRED TO BE PLEDGED

- (a) Under the Dedicated Method, each depository, which is required to pledge collateral to secure the deposit accounts of a public depositor, shall maintain collateral with an escrow agent equal to or in excess of 100 percent of the total amount of all deposit accounts to the credit of the public depositor less the allowable credit for deposit insurance.
- (b) Under the Pooling Method, the amount of required collateral shall be the sum of the amounts required to be collateralized for all public depositors in the depository calculated as follows:
 - (1) Demand Deposits. 100 percent of the average daily balance for the calendar year to date, or 100 percent of the average daily balance for the immediate preceding three calendar month period, or 100 percent of the average daily balance for the current month to date, or such greater amount as shall be given prior approval by the State Treasurer, less the applicable deposit insurance for each public depositor. Calculations for any period other than the “current month to date” method may be based on the period ending the last day of the prior month. At the option of the State Treasurer, the Treasurer may require calculations to be in accordance with the requirements of the Dedicated Method, if it is deemed that the averaging method for a particular depository does not accurately reflect the amount of deposits to be secured.
 - (2) Time Deposits. 100 percent of the actual current balance, less the applicable deposit insurance for each public depositor.

- (c) The maximum amounts of deposit insurance which may be applied to a public depositor shall be one hundred thousand dollars (\$100,000) on demand deposits and a separate one hundred thousand dollars (\$100,000) on time deposits; however, the deposits in the name of an individual school treasurers shall be allowed one hundred thousand dollars (\$100,000) total insurance on both time and demand deposits combined. An unused amount of insurance may not be applied to another public depositor or to another type of deposit.
- (d) All eligible securities pledged shall be valued at current market.
- (e) The public depositor in the case of the Dedicated Method and the State Treasurer in the case of the Pooling Method may require the amount of collateral to be pledged by the depository to be 10 percent greater than the amount required under this Rule, if the market value of pledged securities is below the amount reasonably required to insure public deposits against the risks apparent at the time of the request.

*History Note: Statutory Authority G.S. 115C-444(b); 147-79; 159-31(b);
Eff. August 1, 1980;
Readopted with Change Eff. February 1, 1982;
Amended Eff. April 1, 1994; September 1, 1988; November 1, 1983.*

.0203 SURETY BONDS

Surety bonds with a corporate surety may be substituted in lieu of part or all of the collateral required under this Chapter under the following conditions:

- (1) The company is licensed by the Commissioner of Insurance to conduct the business of suretyship in North Carolina, and is acceptable to the State Treasurer.
- (2) The company may not provide surety bonds to collateralize public deposits within North Carolina in amounts exceeding the underwriting limitations established by the U.S. Department of the Treasury as provided in Sections 9304 to 9308 of Title 31 of the United States Code or successor provisions.
- (3) The bond must not permit reduction in the penal amount except with the express written permission of the State Treasurer in the case of the Pooling Method, or custodian in the case of the Dedicated Method.
- (4) The company must agree to provide the State Treasurer a quarterly report listing all surety bonds issued to collateralize public deposits in North Carolina. The report shall list at a minimum the person to whom issued, the depository for whom issued, the penal sum at the end of the quarter, the highest penal sum during the quarter and the date(s) to which the highest penal sum applied, and the underwriting limitation as defined in Paragraph (2) of this Rule currently in effect.
- (5) The surety bond must include the rules in 20 NCAC 7 by reference and provide that said rules and the definitions therein shall prevail in all questions of conflict with other provisions of the bond.
- (6) The bond shall be payable in federal funds no later than the tenth calendar day after final adjudication. Final adjudication means the issuance of a ruling by the State Treasurer that a default exists, which ruling has not been stayed by an appeal of the ruling as provided by law. The words “collateral” and “collateralize” shall include surety bonds and the use of surety bonds when used in any rule of this Chapter not incompatible with this Rule.

*History Note: Statutory Authority G.S. 115C-444(b); 147-79; 159-31(b);
Eff. November 1, 1983;
Amended Eff. April 1, 1994; June 1, 1984.*

SECTION .0300 — ESCROW OF SECURITIES

.0301 ELIGIBLE ESCROW AGENTS

All securities pledged to secure public deposits shall be deposited either:

- (1) with a Federal Reserve Bank or a Federal Home Loan Bank or a branch thereof pursuant to Rule .0302 of this Section; or
- (2) with a national or state-chartered bank which is not an affiliate of the depository and which has the authority to conduct a trust business pursuant to Rule .0303 of this Section.

*History Note: Statutory Authority G.S. 115C-444(b); 147-79; 159-31(b);
Eff. August 1, 1980;
Readopted Eff. February 1, 1982;
Amended Eff. April 1, 1994.*

.0302 ESCROW WITH FEDERAL RESERVE BANK OR FEDERAL HOME LOAN BANK

- (a) Securities pledged with a Federal Reserve Bank or a branch thereof shall be deposited under Circular 16 of the Federal Reserve Banks in the name of the State Treasurer in the case of the Pooling Method or the public depositor in the case of the Dedicated Method. The appropriate signature card must be executed.
- (b) Securities pledged with a Federal Home Loan Bank or a branch thereof shall be deposited pursuant to Rule .0303(b) of this Section, and pursuant to the terms of the Federal Home Loan Bank's "Pledge Agreement Custody Receipt" which may be in effect from time to time. The pledgee shall be the State Treasurer in the case of the Pooling Method or the public depositor in the case of the Dedicated Method.

*History Note: Statutory Authority G.S. 115C-444(b); 147-79; 159-31(b);
Eff. August 1, 1980;
Readopted with Change Eff. February 1, 1982;
Amended Eff. April 1, 1994.*

.0303 ESCROW WITH A NATIONAL OR STATE-CHARTERED BANK

- (a) Any bank or trust company which is not an affiliate of the depository, and which is authorized to conduct a trust business and is chartered by the United States government or any of its fifty states is eligible to act as an escrow agent.
- (b) All escrow accounts shall be established with the appropriate Escrow Agent Agreement. Escrow accounts for the State Treasurer under the Pooling Method shall be established by Form INV-93B. Escrow accounts for a public depositor under the Dedicated Method shall be established by Form INV-94B. The escrow agent agreements shall contain the necessary language to establish the required trust as provided in this Chapter.

*History Note: Statutory Authority G.S. 115C-444(b); 147-79; 159-31(b);
Eff. August 1, 1980;
Readopted with Change Eff. February 1, 1982;
Amended Eff. April 1, 1994.*

.0304 PLEDGING: RELEASING AND SUBSTITUTING COLLATERAL

- (a) All pledges and releases of collateral to or from an escrow account shall be initiated by means of Form INV-95 "Request for Collateral Pledge and/or Release Form." The form shall require the following:
 - (1) Amount and description (including CUSIP numbers) of securities to be released and pledged;
 - (2) The effect of the transaction(s) on the total collateral pledged, including the percentage of excess then pledged, if a decrease;
 - (3) Prior approval of all releases and substitutions of collateral by the State Treasurer or public depositor, as applicable;
 - (4) That all transactions be reported to the State Treasurer or public depositor as applicable; and
 - (5) Certification by an authorized official of the depository that after the transaction(s) are completed, the collateral pledge meets the requirements of Rule .0202 of this Chapter.
- (b) Nothing in this Rule shall have the effect of reducing the obligations of the depository to secure public deposits or the required amount of collateral to be pledged.
- (c) The depository may substitute its own format for Form INV-95 provided the format is substantially the same in content and order of presentation.

*History Note: Statutory Authority G.S. 115C-444(b); 147-79; 159-31(b);
Eff. August 1, 1980;
Readopted with Change Eff. February 1, 1982;
Amended Eff. April 1, 1994; September 1, 1988.*

.0305 SECURITY AGREEMENTS

- (a) Under the Dedicated Method, each depository which is required to pledge collateral to secure the deposits of a public depositor, shall execute with the public depositor Form INV-94A, "Security Agreement with Resolution." Form INV-94A shall consist of both a "Depository Resolution" and a "Security Agreement."
- (b) Each depository that elects the Pooling Method is required to execute with the State Treasurer Form INV-93A, "Security Agreement with Resolution." Form INV-93A shall consist of both a "Depository Resolution" and a "Security Agreement."
- (c) Forms INV-93A and INV-94A shall contain the necessary language required to establish the provisions for the perfected delivery of collateral securities pursuant to the requirements of the Federal Deposit Insurance Corporation's Policy Statement dated March 23, 1993, which is incorporated herein by reference including later amendments thereto, and of the

North Carolina Uniform Commercial Code. A copy of the Federal Deposit Insurance Corporation Policy Statement may be obtained from the Investment and Banking Division, 325 North Salisbury Street, Raleigh, NC 27603-1385 on receipt of a request accompanied by a self-addressed, stamped #10 envelope.

History Note: Statutory Authority G.S. 115C-444(b); 147-79; 159-31(b);
Eff. November 1, 1983;
Amended Eff. April 1, 1994;

SECTION .0400—DELIVERY AND SALE OF PLEDGED SECURITIES IN THE EVENT OF DEFAULT

.0401 REQUEST FOR DELIVERY OF PLEDGED SECURITIES

- (a) The State Treasurer shall, upon default of the depository, request delivery of such part of the pledged collateral as may be needed to hold the State Treasurer and/or any participating unit harmless from losses incurred by the default. The State Treasurer shall have full discretion as to the amounts and securities to be delivered but shall attempt to choose those securities which he believes to be the most saleable in the circumstances.
- (b) A default is defined as the failure of the depository to fulfill its statutory duties to honor timely requests for withdrawals. A legitimate dispute regarding the liability of the depository for specific items of deposit or withdrawal shall not be considered a default during the period of adjudicating the dispute so long as the disputed amounts are 100 percent separately collateralized by the depository at market value in accordance with this Chapter.
- (c) The State Treasurer shall provide at least 24 hours notice to the depository and may provide up to 7 calendar days notice of his order to the escrow agent to deliver part or all of the pledged securities to the State Treasurer and notice of the amount of the default. During the notice period, the depository shall have the right to pay off the amount in default in full by the sale of any of the securities pledged which the depository chooses to sell, provided that the escrow agent or the depository shall transfer the entire amount of the default in federal funds to the State Treasurer prior to the due date for delivery of the pledged securities. This notice may be provided solely by telephone communication.

History Note: Statutory Authority G.S. 115C-444(b); 147-79; 159-31(b);
Eff. August 1, 1980;
Readopted Eff. February 1, 1982;
Amended Eff. April 1, 1994; September 1, 1988.

.0402 SAFEKEEPING OF DELIVERED SECURITIES

- (a) The State Treasurer, may, at his sole discretion, require delivery either to the Investment and Banking Division, Department of State Treasurer, 325 North Salisbury Street, Raleigh, North Carolina 27603-1385 or to any duly licensed State chartered or national bank designated by the State Treasurer.
- (b) The State Treasurer shall use the same care with respect to the custody of the delivered securities as he exercises with respect to the State investments in his custody but he shall not insure the delivered securities against any risks.

History Note: Statutory Authority G.S. 115C-444(b); 147-79; 159-31(b);
Eff. August 1, 1980;
Readopted Eff. February 1, 1982;
Amended Eff. April 1, 1994.

.0403 CERTIFICATION OF DEFAULT BY PUBLIC DEPOSITORS

- (a) The public depositor shall provide to the State Treasurer a statement of all circumstances which he feels gives rise to a default. Each public depositor is required to discuss with the State Treasurer the need for a determination on the existence of a default prior to the sending of the statement. The statement shall be notarized and mailed to the State Treasurer by certified mail, return receipt requested. In addition, each public depositor shall provide the State Treasurer with certified

copies of the security agreement with resolution, the escrow agent agreements, or other agreement and a current list of securities pledged to secure the applicable deposit accounts.

- (b) The State Treasurer shall make a determination no later than the close of the business day, next following receipt of the request with regard to the full default. The State Treasurer shall determine that:
- (1) a default has occurred,
 - (2) a default has not occurred, or
 - (3) that additional information is necessary before a ruling can be made.
- If additional information is necessary, the public depositor may provide the information required. If it is provided, the public depositor shall submit the information, notarized, by certified mail, return receipt requested. Receipt of the new information shall be considered to be a new request for determination of the State Treasurer shall be considered a contested case.
- (c) Upon determining that there is a default as regards a public depositor other than the State Treasurer, the State Treasurer shall proceed under Rule .0401 of this Section.

*History Note: Statutory Authority G.S. 115C-444(b); 147-79; 159-31(b);
Eff. August 1, 1980;
Readopted Eff. February 1, 1982;
Amended Eff. April 1, 1994.*

.0404 SALE OF THE DELIVERED SECURITIES

- (a) The State Treasurer shall canvass its normal buyers for the type of securities which are to be sold and all potential buyers furnished to him by the depository from among licensed dealers who either make a market in the security or are currently offering to buy the security.
- (b) The State Treasurer shall sell as much of the securities as are needed to provide cash to cover the amount of the default. The State Treasurer may sell, at his sole discretion, all or part of any specific issue of security to be sold.
- (c) The State Treasurer shall deposit from proceeds of the sale the amount of any default on deposit accounts of State funds in the applicable fund of the State and shall return all unsold securities and excess cash to the depository. The State Treasurer shall provide to the depository a release for the amount of default paid and such other documentation as may be appropriate to enable the depository to pursue a claim against a third party for the amount of the default.
- (d) If the default is on deposit accounts of a public depositor of a participating unit, the State Treasurer shall retain the amount of the default and shall return all unsold securities and excess cash to the depository. The State Treasurer shall determine the amount distributable from the proceeds of the sale from the proceeds of the sale to each public depositor, not to exceed the uninsured amount in default. The State Treasurer shall pay the amount to the public depositor after receiving from the public depositor a release, in duplicate, for the amount in default paid and such other documentation as may be appropriate to enable the depository to pursue a claim against a third party for the amount of the default.

*History Note: Statutory Authority G.S. 115C-444(b); 147-79; 159-31(b);
Eff. August 1, 1980;
Readopted Eff. February 1, 1982;
Amended Eff. April 1, 1994.*

SECTION .0500 — REPORTING

.0501 QUARTERLY REPORTING

- (a) In the case of the Dedicated Method, the depository shall report to each public depositor the total par value and market value of the securities pledged on the last day of the calendar quarter with the escrow agent(s) to secure public deposits of the public depositor. The reports shall be submitted no later than the last day of the following month.
- (b) In the case of the Pooling Method, the depository shall submit Form INV-96, "Quarterly Report on Public Deposits" to the State Treasurer no later than the last day of the month following the end of the calendar quarter. The report shall be dated on the last working day of the calendar quarter, shall summarize the accounts secured, shall summarize the amounts insured and secured at market, shall indicate the amount and percentage of excess collateral pledged, and shall be certified by an authorized officer of the depository that the statements are correct.

- (c) In addition to the Quarterly Report required by Rule .0501(b) of this Rule, a depository utilizing the Pooling Method shall submit to the State Treasurer Form INV-99, "Selected Financial Data," which is a report containing selected financial data contained in either the current quarterly report of condition required by the Federal Deposit Insurance Act (12 U.S.C.) or the current quarterly report required to be filed with the Federal Home Loan Bank Board, as applicable.

History Note: Statutory Authority G.S. 115C-444(b); 147-79; 159-31(b);
Eff. August 1, 1980;
Readopted with change Eff. February 1, 1982;
Amended Eff. April 1, 1994; September 1, 1988.

.0502 ANNUAL REPORTING

- (a) In the case of the Dedicated Method, on or before July 31 of each year, the depository shall submit to each public depositor Form INV-98.
- (b) In the case of the Pooling Method, on or before July 31 of each year, each depository shall submit to the State Treasurer Forms INV-97 and INV-98, in addition to the quarterly report (INV-96) dated June 30.
- (c) Form INV-97, "Annual Report on Public Deposits," shall be dated June 30, shall list all public depositors, and for each public depositor, show the amounts on deposit by type, identify the amounts insured by type, and shall be certified by an authorized officer of the depository that the statements are correct.
- (d) Form INV-98, "Annual Report on Collateral for Public Deposits," shall be dated June 30, shall list and describe all collateral pledged (including CUSIP number, par and market value), with each escrow agent for the public depositor or State Treasurer, and shall be certified by an authorized officer of the depository that the statements are correct.
- (e) The depository may substitute its own format for Form INV-97 and Form INV-98, provided the format is substantially the same in content and order of presentation.

History Note: Statutory Authority G.S. 115C-444(b); 147-79; 159-31(b);
Eff. August 1, 1980;
Readopted with Change Eff. February 1, 1982;
Amended Eff. April 1, 1994; September 1, 1988.

.0503 SPECIAL CALL REPORT

Not more often than once in each annual period, the State Treasurer may require each depository to furnish a report in the same detail as the annual report as of any business day not more than 10 calendar days before the date at which the special request for the report is mailed. In addition, the State Treasurer may require a detailed report listing the account numbers of each public depositor.

History Note: Statutory Authority G.S. 115C-444(b); 147-79; 159-31(b);
Eff. August 1, 1980;
Readopted with Change Eff. February 1, 1982;
Amended Eff. April 1, 1994.

.0504 SPECIAL REPORTING RULE FOR DEDICATED METHOD DEPOSITORIES

A depository with State funds and which has elected the Dedicated Method shall file, in addition to all forms required under the Dedicated Method, Form INV-99, "Selected Financial Data," referred to in Rule .0501, Paragraph (c) of this Section.

History Note: Statutory Authority G.S. 115C-444(b); 147-79; 159-31(b);
Eff. February 1, 1982;
Amended Eff. April 1, 1994; September 1, 1988.

.0505 ADDITIONAL MONTHLY REPORTING REQUIREMENTS

In the case of the Pooling Method, the State Treasurer may at any time and at his own discretion direct the depository to file a report in the same format as the Quarterly Report required by Rule .0501(b), but on a monthly basis. However, the monthly reporting directive shall be required under any one of the following circumstances:

- (1) A required report is repeatedly not filed timely.
- (2) A required report is filed with a material error.
- (3) A Quarterly Report required by Rule .0501(b) is filed indicating that “excess” collateral pledged is less than 10 percent of the amount required by Rule .0202.
- (4) The depository has been notified that the State Treasurer has invoked Rule .0202(e), requiring additional collateral.

Such monthly reporting directive shall be effective for a period of six months, after which time the depository may resume quarterly reporting. However, subsequent violations shall extend the period of monthly reporting as set forth in this Rule.

History Note: *Statutory Authority G.S. 115C-444(b); 147-79; 159-31(b);
Eff. September 1, 1988;
Amended Eff. April 1, 1994.*

SECTION .0600 — ENFORCEMENT

.0601 AUDIT

The State Treasurer may cause such audits to be performed as he believes necessary, or may request the active assistance of the State Auditor of North Carolina and of all federal and state regulatory agencies to assist him in the enforcement of the law and regulations regarding collateralization of public deposits pursuant to this Chapter.

History Note: *Statutory Authority G.S. 115C-444(b); 147-79; 159-31(b);
Eff. August 1, 1980;
Amended Eff. February 1, 1982.*

.0602 REVOCATION

The State Treasurer may at any time and at his own discretion revoke the right of a depository to use the Pooling Method pursuant to 20 NCAC 7. An appeal of such an order shall be considered a contested case. During the processing of the contested case the order shall remain in effect.

History Note: *Statutory Authority G.S. 115C-444(b); 147-79; 159-31(b);
Eff. August 1, 1980;
Readopted Eff. February 1, 1982;
Amended Eff. April 1, 1994.*

.0603 ACCELERATION OF MATURITIES

- (a) Whenever any depository shall fail to correct a deficiency in collateral pursuant to this Chapter, including but not limited to 20 NCAC 7 .0202(e), the State Treasurer or the public depositor of a participating unit, as the case may be, shall cause to be made an oral demand to the depository to correct the deficiency.
- (b) The public depositor, in the case of the Dedicated Method, shall report any failure of a depository to correct a deficiency in the collateral pursuant to this Chapter to the State Treasurer no less than one full workday after the oral request to correct the deficiency. This report shall include a full statement of the circumstances surrounding the deficiency. The report shall be oral but shall be immediately followed by a written report.
- (c) The State Treasurer, after receiving the oral report from a public depositor pursuant to Paragraph (b) or no less than one full work day after the oral request was made in his name to a depository which fails to correct the deficiency in the collateral required by this Chapter, shall issue a written request to the depository to correct a deficiency in the collateral required by this Chapter. The depository may request an informal hearing within seven days of the receipt of the request. The appeal of the ruling by the State Treasurer shall be a contested case heard pursuant to Subchapter 1F of this Title.
- (d) Any depository which after receiving the written request to correct a deficiency in the collateral does not correct the deficiency shall be subject to the provision of automatic acceleration of time deposits of public depositories having fixed maturities. On or after seven days from the receipt of the written request sent pursuant to Paragraph (c) of this Rule or

three days from the receipt of the written decision of the State Treasurer arising from the hearing, the State Treasurer may cause all time deposits having fixed maturities to be accelerated and become due and payable on demand without any loss in interest through the date actually paid by the depository.

*History Note: Statutory Authority G.S. 115C-444(b); 147-79; 159-31(b);
Eff. November 1, 1983;
Amended Eff. April 1, 1994.*

