

Miss. Code Ann. § 27-105-5

§ 27-105-5. Qualification as public funds depository; authority of State Treasurer; definitions

(1) Any financial institution maintaining a deposit-taking facility in this state whose accounts are insured by the Federal Deposit Insurance Corporation or any successors to that insurance corporation, may qualify as a public funds depository by submitting an application to the State Treasurer as provided by Section 27-105-9, if the institution has a primary capital to total assets ratio of five and one-half percent (5 1/2%) or more. That ratio shall be determined not later than December 1 in each calendar year by the State Treasurer on the basis of balance sheets of applying institutions at June 30 of the same calendar year, and an institution shall not be a qualified depository and shall not receive any public funds unless its ratio has been certified annually by the Treasurer as meeting the prescribed requirement. Each applicant shall furnish to the State Treasurer such financial statements, balance sheets or other documentation, sworn to by a duly elected officer, on such date or dates and on such forms as the State Treasurer may require. Any knowing or willful misstatement of fact on those forms shall subject the officer swearing to them to the penalty of perjury, and the financial institution of which he is an officer shall not be eligible to serve as a depository for a period of one (1) year beginning with the date on which the State Treasurer certifies that such a misstatement has been made. When so approved by the State Treasurer, the institution shall place on deposit with the State Treasurer qualified bonds, notes and liquid securities in an aggregate amount at least equal to one hundred five percent (105%) of the average daily balance of funds on deposit in the aggregate by the State of Mississippi or any agency or department of the state or by any county, municipality or other governmental unit in excess of that portion of accounts insured by the Federal Deposit Insurance Corporation, or any successor thereto.

(2) Any financial institution maintaining a deposit-taking facility in this state whose accounts are insured by the Federal Deposit Insurance Corporation or any successors to that insurance corporation and which has been in existence for three (3) or more years may qualify as a public funds depository and public funds guaranty pool member under Section 27-105-6 by submitting an application to the State Treasurer as provided by Section 27-105-9, if the institution has a primary capital to total assets ratio of six and one-half percent (6 1/2%) or more and otherwise meets the requirements of Section 27-105-6. That ratio shall be determined not later than December 1 in each calendar year by the State Treasurer on the basis of balance sheets of applying institutions at June 30 of the same calendar year, and an institution shall not be a member of the public funds guaranty pool unless its ratio has been certified annually by the Treasurer as meeting the prescribed requirement. Each applicant shall furnish to the State Treasurer such financial statements, balance sheets or other documentation, sworn to by a duly elected officer, on such date or dates and on such forms as the State Treasurer may require. Any

knowing or willful misstatement of fact on those forms shall subject the officer swearing to them to the penalty of perjury and the financial institution of which he is an officer shall not be eligible to serve as a depository for a period of one (1) year beginning with the date on which the State Treasurer certifies that such a misstatement has been made. When so approved by the State Treasurer, the institution shall meet its security requirement of one hundred five percent (105%) by placing on deposit with the State Treasurer qualified bonds, notes and liquid securities in an aggregate amount at least equal to fifty-two and one-half percent (52 1/2%) of the average daily balance of funds on deposit in the aggregate by the State of Mississippi or any agency or department of the state or by any county, municipality or other governmental unit in excess of that portion of accounts insured by the Federal Deposit Insurance Corporation, or any successor thereto, and executing a guarantee equal to the balance of fifty-two and one-half percent (52 1/2%) of the average daily balance of funds on deposit in the aggregate by the State of Mississippi or any agency or department of the state or by any county, municipality or other governmental unit in excess of that portion of accounts insured by the Federal Deposit Insurance Corporation, or any successor thereto.

(3) The term "qualified bonds, notes and liquid securities" as used in this section shall mean:

(a) All securities that are direct obligations of the United States Treasury or any other obligations fully guaranteed by the United States government.

(b) Bonds, notes and other obligations of the Federal Home Loan Bank, Federal National Mortgage Association, Federal Land Banks, Banks for Cooperatives, and Federal Intermediate Credit Banks, the Government National Mortgage Association, the Federal Housing Administration, the Farmers Home Administration, the Farm Credit System Financial Assistance Corporation, the United States Postal Service, the Federal Financing Bank, the Student Loan Marketing Association, the Small Business Administration, the General Services Administration, the Washington Metropolitan Area Transit Authority, the Maritime Administration, the Export-Import Bank, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, loan participations that carry the guarantee of the Commodity Credit Corporation, an instrumentality of the United States Department of Agriculture or other similar agencies approved by the State Treasurer.

(c) Obligations of the Tennessee Valley Authority.

(d) Legal obligation or revenue bonds of the State of Mississippi, its agencies, or any political subdivision of the state, or any municipality located in the State of Mississippi, or the Yazoo Mississippi Delta and the Mississippi Levee Districts, or the Mississippi Higher Education Assistance Corporation or its successors, or any body corporate and politic created under the laws of the State of Mississippi.

(e) General obligations issued by any state or by a county, parish or municipality of any state, the full faith and credit of which are pledged to the payment of principal and interest, that are rated "A" or better by any recognized national rating agency engaged in the business of rating bonds.

(f) Surety bonds of any surety company authorized to do business in the State of Mississippi.

(g) All bonds authorized as security for state funds under paragraphs (c), (d) and (e), inclusive, shall be investment quality, and any bonds under paragraphs (c), (d), (e) and (f), inclusive, which are rated substandard by any of the appropriate supervisory authorities having jurisdiction over the depository or by any recognized national rating agency engaged in the business of rating bonds, shall not be eligible for pledging as security to the State of Mississippi by any qualified state depository.

No bonds shall be accepted as security for more than their stated par value or market value, whichever is lower, except bonds and obligations of the State of Mississippi and Mississippi State Highway bonds or notes, which may be accepted as security at par value or market value, whichever is greater

The bonds, notes and liquid securities to be placed on deposit shall secure both deposits and the accrued interest thereon.

Money shall be drawn from the depositories so as to leave in each as near as practicable, its equitable proportion of state funds.

The State Treasurer is authorized and empowered to:

(i) Deposit for safekeeping in the vaults of any of the state or national banks located within this state that are members of the Federal Deposit Insurance Corporation and that have appropriate safekeeping facilities approved by the State Depository Commission, any federal reserve bank, any federal reserve branch bank, or any bank that is a member of the Federal Reserve System and is located in a city where there is a federal reserve bank or a federal reserve branch bank, the securities placed with him by financial institutions qualifying as state depositories; or

(ii) Accept, in lieu of the securities themselves, safekeeping trust receipts issued to the State Treasurer by the authorized safekeeping banks listed in subparagraph (i) above; the safekeeping trust receipts shall describe the securities and show that the securities are held for safekeeping for the account of the State Treasurer or other governmental unit. The securities so deposited shall not be commingled in any manner with the assets of the safekeeping bank.

The safekeeping banks listed in subparagraph (i) above are authorized to issue to the State Treasurer their safekeeping trust receipts based on safekeeping trust receipts issued to them by any of their correspondent banks that are members of the Federal Reserve System and are located in any federal reserve city and that have physical custody of the pledged securities.

In no event shall the State Treasurer deposit for safekeeping with any depository securities placed by the depository with the State Treasurer in qualifying as a public funds depository, nor shall he accept a safekeeping trust receipt by or from a depository covering securities it owns in order to secure state funds on deposit with it.

(4) In fulfilling the requirements of this Section 27-105-5, the State Treasurer shall:

(a) Maintain perpetual inventory of pledged collateral and perform monthly market valuations and quality ratings.

(b) Monitor and confirm, as often as deemed necessary by the Treasurer, the pledged collateral held by third party custodians.

(c) Perfect an interest in pledged collateral by having pledged securities moved into an account established in the Treasurer's name. This action shall be taken at the discretion of the Treasurer.

(d) Review the reports of each qualified public funds depository for material changes in capital accounts or changes in name, address or type of institution, record the average daily balances of public deposits held; and monitor the collateral-pledging levels and required collateral based on the average daily balances.

(e) Compare public deposit information reported by qualified public funds depositories and public depositors. That comparison shall be conducted for qualified public depositories based on established financial condition criteria of record on September 30.

(f) Verify the reports of any qualified public funds depository relating to public deposits it holds when necessary to protect the integrity of the public deposits program.

(g) Confirm public deposits, to the extent possible under current law, when needed.

(h) Require at his or her discretion the filing of any information or forms required under this chapter to be by electronic data transmission. Those filings of information or forms shall have the same enforceability as a signed writing.

(5) A qualified public funds depository shall:

(a) Within fifteen (15) days after the end of each calendar month or when requested by the Treasurer, submit to the Treasurer a written report, under oath, indicating the average daily balance of all public deposits held by it during the reported month, required collateral, a detailed schedule of all securities pledged as collateral, selected financial information, and any other information that the Treasurer determines necessary to administer this chapter.

(b) Provide to each public depositor annually, not later than thirty (30) days following the public depositor's fiscal year end, the following information on all open accounts identified as a "public deposit" for that public depositor as of its fiscal year end, to be used for confirmation purposes: the federal employer identification number of the public funds depository, the name on the deposit account record, the federal employer identification number on the deposit account record, and the account number, account type and actual account balance on deposit. Any discrepancy found in the confirmation process shall be reconciled within sixty (60) days of the public depositor's fiscal year end.

(c) Submit to the Treasurer annually, not later than sixty (60) days of the public depositor's fiscal year end, a report of all public deposits held for the credit of all public depositors at the close of business on each public depositor's fiscal year end. The annual report shall consist of public deposit information in a report format prescribed by the Treasurer. The manner of required filing may be as a signed writing or electronic data transmission, at the discretion of the Treasurer.

(6) Public depositors shall comply with the following requirements:

(a) A public depositor shall ensure that the name of the public depositor and its tax identification number are on the account or certificate provided to the public depositor by the qualified public depository in a manner sufficient to disclose the identity of the public depositor;

(b) Not later than thirty (30) days following its fiscal year end, a public depositor shall notify the State Treasurer of its official name, address, federal tax identification number, and provide a listing of all accounts that it had with qualified public depositories, including the deposit balance in those accounts, as of its fiscal year end. A public entity established during the year shall furnish its official name, address and federal tax identification number to the State Treasurer before making any public deposit.

(7) Any information contained in a report of a qualified public funds depository required under Section 27-105-5 or 27-105-6 shall be considered confidential and exempt from disclosure and not subject to dissemination to anyone other than the State Treasurer and the State Auditor under the provisions of this chapter.

(8) The State Treasurer is empowered to assume responsibility as successor pledgee as agent on behalf of any county, municipality or other governmental unit of any and all collateral pledged before July 1, 2001, to that county, municipality or governmental unit by that public funds depository. Upon assuming responsibility as successor pledgee as provided in this subsection (8), the State Treasurer is empowered to sign such documents on behalf of any such county, municipality or governmental unit as may be required by a trustee custodian, including, but not limited to, any documentation necessary to change the pledgee from the county, municipality or governmental unit as pledgee to the State Treasurer as agent.

(9) As used in this section and Section 27-105-6, the following terms shall have the meanings set forth below:

(a) The term "primary capital" means the sum of common stockholders' equity capital, including common stock and related surplus, undivided profits, disclosed capital reserves that represent a segregation of undivided profits, and foreign currency translation adjustments, less net unrealized holding losses on profits, and foreign currency translation adjustments, less net unrealized holding losses on available-for-sale equity securities with readily determinable fair values; noncumulative perpetual preferred stock, including any related surplus; and minority interests in the equity capital accounts of consolidated subsidiaries; the allowance for loan and lease losses; cumulative perpetual preferred stock, long-term preferred stock (original maturity of at least twenty (20) years) and any related surplus; perpetual preferred stock (and any related surplus) where the dividend is reset periodically based, in whole or in part, on the bank's current credit standing, regardless of whether the dividends are cumulative or noncumulative; hybrid capital instruments, including mandatory convertible debt securities; term subordinated debt and intermediate-term preferred stock (original average maturity of five (5) years or more) and any related surplus; and net unrealized holding gains on equity securities.

(b) The term "assets classified loss" means:

(i) When measured as of the date of examination of the financial institution, those assets that have been determined by an evaluation made by a state or federal examiner as of that date to be a loss; and

(ii) When measured as of any other date, those assets:

(A) That have been determined: 1. by an evaluation made by a state or federal examiner at the most recent examination of the financial institution to be a loss, or 2. by evaluations made by the financial institution since its most recent examination to be a loss; and

(B) That have not been charged off from the financial institution's books or collected.

(c) The term "intangible assets" means those assets that would be required to be reported in the item for intangible assets in a Federal Deposit Insurance Corporation (FDIC) banking institution's "Reports of Condition and Income" (Call Reports), regardless of whether the institution is insured by the FDIC.

(d) The term "mandatory convertible debt" means a subordinated debt instrument meeting the requirements of the Federal Deposit Insurance Corporation that requires the issuer to convert the instrument into common or perpetual preferred stock by a date at or before the maturity of the debt instrument. The maturity of these instruments must be twelve (12) years or less.

(e) The term "mortgage servicing rights" means those assets (net of any related valuation allowances) that result from contracts to service loans secured by real estate (that have been securitized or are owned by others) for which the benefits of servicing are expected to more than adequately compensate the servicer for performing the servicing.

(f) The term "perpetual preferred stock" means a preferred stock that does not have a stated maturity date or that cannot be redeemed at the option of the holder and that has no other provisions that will require future redemption of the issue. It includes those issues of preferred stock that automatically convert into common stock at a stated date. It excludes those issues, the rate on which increases, or can increase, in such a manner that would effectively require the issuer to redeem the issue.

(g) The term "total assets" means the average of total assets of any financial institution that are or would be included in a Federal Deposit Insurance Corporation (FDIC) banking institution's "Reports of Condition and Income" (Call Reports), regardless of whether the institution is insured by the FDIC, plus the allowance for loan and lease losses, minus assets classified loss and minus intangible assets other than mortgage servicing rights.

(h) The term "average daily balance" means the average daily balance of public deposits of each governmental unit held during the reported month. The average daily balances must be determined by totaling, by account, the daily balance held by the depositor and then dividing the total by the number of calendar days in the month. Deposit insurance is then deducted from each public depositor's balance and the resulting amounts are totaled to obtain the average daily balance.

(i) The term "public funds" means funds in which the entire beneficial interest is owned by a governmental unit or funds held in the name of a public official of a governmental unit charged with the duty to receive or administer funds and acting in such official capacity.

(j) The term "governmental unit" means the State of Mississippi, and any office, department, agency, division, bureau, commission, board, institution, hospital, college, university, airport authority or other instrumentality thereof, whether or not such body or instrumentality has the authority to levy taxes or to sue or be sued in its own name. Further, it shall mean any body politic or body corporate other than the state responsible for governmental activities only in geographic areas smaller than that of the state, including, but not limited to any county, municipality, school district, community hospital as defined in Section 41-13-10, airport authority or other instrumentality thereof, whether or not such body or instrumentality has the authority to levy taxes or to sue or be sued in its own name. It is the intent to include all state and political subdivisions or instrumentalities thereof whether specifically recited herein or not.

HISTORY: SOURCES: Codes, Hemingway's 1917, § 4192; 1930, § 4326; 1942, § 9128; Laws, 1910, ch. 224; Laws, 1918, ch. 153; Laws, 1932, ch. 177; Laws, 1934, ch. 215; Laws, 1936, ch. 169; Laws, 1942, ch. 142; Laws, 1948, ch. 205, § 1; Laws, 1969, Ex Sess ch. 53, § 6; Laws, 1971, ch. 421, § 1; Laws, 1972, ch. 443, § 2; Laws, 1979, ch. 417, § 9; Laws, 1985, ch. 312, § 2; Laws, 1988, ch. 473, § 2; Laws, 1990, ch. 327, § 1; Laws, 1990, ch. 328, § 1; Laws, 1995, ch. 567, § 2; Laws, 1999, ch. 404, § 1; Laws, 2000, ch. 408, § 1; Laws, 2003, ch. 336, § 1, eff from and after July 1, 2003.