

APA-1
07/04

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control No.: 892 Department or Agency: Office of State Treasurer
Rule No. 892-X-1-.19
Rule Title: Use of Letters of Credit as Eligible Collateral
New Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? No

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? No

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer Daria Story
Date 7.20.11

(DATE FILED)
(STAMP)

Office of State Treasurer
SAFE Division

NOTICE OF INTENDED ACTION

AGENCY NAME: Office of State Treasurer

RULE NO. & TITLE:

892-X-1-.01	<u>Purpose</u>
892-x-1-.03	<u>Designation as a Qualified Public Depository</u>
892-X-1-.04	<u>Collateral Pledging Levels</u>
892-X-1-.05	<u>Maintaining Active Status</u>
892-X-1-.06	<u>Valuation of Collateral</u>
892-X-1-.07	<u>Custodians</u>
892-X-1-.08	<u>Requirements of QPDs</u>
892-X-1-.09	<u>Requirements of Public Depositors</u>
892-X-1-.13	<u>Grounds for Involuntary Withdrawal, Suspension, or Imposition of Administrative Penalties</u>
892-X-1-.14	<u>Administrative Penalties - QPD</u>
892-X-1-.15	<u>Involuntary Withdrawal or Suspension</u>
892-X-1-.16	<u>Voluntary Withdrawal</u>
892-X-1-.18	<u>Reports by the Treasurer</u>
892-X-1-.19	<u>Use of Letters of Credit as Eligible Collateral</u>

INTENDED ACTION:

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

To amend Rule No. 892-X-1-.01	<u>Purpose</u>
To amend Rule No. 892-x-1-.03	<u>Designation as a Qualified Public Depository</u>
To amend Rule No. 892-X-1-.04	<u>Collateral Pledging Levels</u>
To amend Rule No. 892-X-1-.05	<u>Maintaining Active Status</u>
To amend Rule No. 892-X-1-.06	<u>Valuation of Collateral</u>
To amend Rule No. 892-X-1-.07	<u>Custodians</u>
To amend Rule No. 892-X-1-.08	<u>Requirements of QPDs</u>
To amend Rule No. 892-X-1-.09	<u>Requirements of Public Depositors</u>

To amend Rule No. 892-X-1-.13 Grounds for Involuntary Withdrawal, Suspension, or Imposition of Administrative Penalties
To amend Rule No. 892-X-1-.14 Administrative Penalties - QPD
To amend Rule No. 892-X-1-.15 Involuntary Withdrawal or Suspension
To amend Rule No. 892-X-1-.16 Voluntary Withdrawal
To amend Rule No. 892-X-1-.18 Reports by the Treasurer
To amend Rule No. 892-X-1-.19 Use of Letters of Credit as Eligible Collateral

SUBSTANCE OF PROPOSED ACTION:

To amend Rule No. 892-X-1-.01 Purpose to remove a reference to the Appendix that was repealed effective September 24, 2008.

To amend Rule No. 892-x-1-.03 Designation as a Qualified Public Depository to remove a reference to the Appendix that was repealed effective September 24, 2008.

To amend Rule No. 892-X-1-.04 Collateral Pledging Levels to clarify evaluations may be proprietary.

To amend Rule No. 892-X-1-.05 Maintaining Active Status to remove listing of required forms.

To amend Rule No. 892-X-1-.06 Valuation of Collateral to clarify Rule title, and to require QPD's to provide annual certification of non-rated obligations.

To amend Rule No. 892-X-1-.07 Custodians to include trust company criteria, require listing of securities ratings, delete redundant information, and condense violation and fine procedures.

To amend Rule No. 892-X-1-.08 Requirements of QPDs to clarify reporting requirements and to notify Treasurer of any confidential information.

To amend Rule No. 892-X-1-.09 Requirements of Public Depositors to shorten timeframe to submit claim form from 120 days to 90 days.

To amend Rule No. 892-X-1-.13 Grounds for Involuntary Withdrawal, Suspension, or Imposition of Administrative Penalties to clarify timeframe to pledge collateral and to receive Treasurer approval for decrease in LOC only.

To amend Rule No. 892-X-1-.14 Administrative Penalties - QPD to delete redundant information and to condense violation and fine procedures.

To amend Rule No. 892-X-1-.15 Involuntary Withdrawal or Suspension to provide that the withdrawing QPD will be listed on the website.

To amend Rule No. 892-X-1-.16 Voluntary Withdrawal to clarify withdrawal procedures.

To amend Rule No. 892-X-1-.18 Reports by the Treasurer to rename Rule title for clarification and to clarify confidential information.

To amend Rule No. 892-X-1-.19 Use of Letters of Credit as Eligible Collateral to clarify use of LOC, to condense requirements, and to remove requirement of a LOC Agreement.

TIME, PLACE, MANNER OF PRESENTING VIEWS:

Interested persons may submit oral or written comments by personal appearance, mail, facsimile or electronic mail received not later than 5:00 PM on Tuesday, September 6, 2011 to:

Office of State Treasurer, State Capitol Building S-106, 600 Dexter Avenue, Montgomery, AL 36104; telephone 334-242-7501; facsimile 334-353-4080; or email daria.story@treasury.alabama.gov.

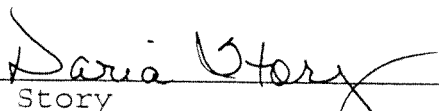
FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

A hearing on this proposal and comments received thereto will be held on Tuesday, September 6, 2011 at 2:00 PM, CST, at the following place:

Office of State Treasurer, State Capitol Building, Room S-106, 600 Dexter Avenue, Montgomery, AL 36104.

CONTACT PERSON AT AGENCY:

Daria Story, Assistant State Treasurer, 334-242-7506, daria.story@treasury.alabama.gov



Daria Story
Assistant State Treasurer

892-X-1-19 Use of Letters of Credit as Eligible Collateral.

(1) ~~A QPD may apply for approval from the Treasurer to use Letters of Credit in connection with satisfying the QPD's Collateral Pledging Requirement by completing, signing and submitting a Letters of Credit Agreement Governing Use (the "LC Agreement"). The appropriate form of Collateral Agreement, Contingent Liability Agreement, Certification(s) of Adoption of Directors' Resolution, and Authorized Representative(s) and Signature Certification specified in Rule 892-X-1-19 must be on file with the Treasurer. The use of LOC Letters of Credit by a QPD will be subject to all of the terms and conditions of the LC Agreement, the provisions and requirements of the SAFE Program Act, Rules and any additional requirements, conditions and limitations prescribed by the Treasurer.~~

(2) Each LOC Letter of Credit issued and delivered to the Treasurer shall.

(a) Be irrevocable and unconditional;

(b) ~~Have an initial expiration date that is not sooner than one (1) year from the date of issuance;~~

(be) ~~Provide that the expiration date thereof shall be automatically extended, without amendment, for successive one (1) year periods from the then applicable expiration date unless the issuer of the letter of credit shall notify have notified the Treasurer in writing not less than sixty ninety (690) days prior to the then final maturity date applicable effective date that the issuer has elected not to extend the expiration date for an the additional period;~~

(cd) Permit multiple and partial drawings; and

(de) Shall otherwise be in a standard FHLB form approved by the Treasurer.

(ef) The Treasurer may obtain certificates of incumbency from each LOC issuer periodically to verify the signature authority of officers who execute LOC letters of Credit.

(3) Changes in the terms of a current LOC letters of Credit shall be made in the form of an amendment. All amendment decreases to the LOC letter of Credit amount shall be subject to the prior written approval or disapproval of the Treasurer, ~~and shall be in form and content acceptable to the Treasurer. No amendment decrease shall be effective until written approval by the Treasurer has been obtained.~~ The QPD shall be responsible to make appropriate application to the LOC issuer for any amendment approved by the Treasurer. ~~Unless otherwise approved by the Treasurer in writing, Letters of Credit may not be amended more than six (6) times during each twelve month period. Amendments will be~~

effective once received from LOC issuer and attached to the original LOC.

(4) - The Treasurer shall have the unconditional right, without further proceedings and without notice of any kind to the QPD or any other person (other than the LOC issuer) to draw, in whole or in part, and in either single or multiple drafts, on any or all LOC ~~Letters of Credit~~ held by the Treasurer at any time prior to the expiration of the LOC ~~Letter of Credit~~ if the Treasurer, in his or her discretion, determines that it is necessary to draw on the LOC ~~Letter of Credit~~, including by way of example but not limited to, upon any of the following:

(a) Any Default or Insolvency, as defined in Section 41-14A-2(7) of the Code of Alabama, shall occur with respect to the QPD;

(b) ~~The QPD violates or fails to comply with any of the terms or requirements of the LC Agreement, the QPD's Contingent Liability Agreement, the Collateral Agreement or any other agreement or instrument executed by the QPD in connection with the SAFE Program;~~

(c) There shall occur any event or circumstance which constitutes grounds for any involuntary withdrawal or suspension of the QPD from the SAFE Program or for the imposition of administrative penalties against the QPD;

(d) The QPD fails to have on deposit with the Treasurer Required Collateral;

(e) The Treasurer receives notification from the -LOC issuer that it will not extend the expiration date for an additional term as provided in the initial LOC of any Letter of Credit ; or

(f) ~~In the case of any Letter of Credit that has a final stated expiration date, the QPD fails to provide to the Treasurer, not less than 30 days prior to the final expiration date, (a) an amendment to the existing Letter of Credit extending its expiration date for at least one (1) year from its then-stated expiration date, (b) notification of application for a new LOC or (b) other Eligible Collateral.~~

~~(5) No cancellation of any Letter of Credit shall be effective until the Treasurer has provided written approval to the QPD and returned the Letter of Credit to the LOC issuer. The QPD shall be responsible to make appropriate written request to the Treasurer and to make the appropriate request to the LOC issuer with the Treasurer's written approval attached.~~

~~(56) No substitution of any LOC ~~Letter of Credit~~ for other Eligible Collateral shall be effective until the Treasurer has received the properly executed LOC ~~Letter of Credit~~ or approved amendment to an existing LOC ~~Letter of Credit~~. No substitution of any Eligible Collateral for any LOC ~~Letter of Credit~~ shall be effective until Custodian has acknowledged to the Treasurer in writing the Custodian's receipt of the substitute collateral and the Treasurer has returned the~~

| ~~Letter of Credit to the issuer.~~

Author: Daria Story, Chief Operating Officer, Office of State Treasurer

Statutory Authority: Sections 41-14-35, 41-14A-2 and 41-14A-6, Code of Alabama 1975, as amended.

History: **New Rule:** Filed December 20, 2004; effective January 24, 2005.

Amended (Rule Number Only) : Filed January 19, 2006; effective February 23, 2006. **Amended:** Filed August 20, 2008; effective September 24, 2008.

| **Amended:** Filed July 20, 2011