



COLORADO

Department of
Regulatory Agencies

Division of Banking

PDPA FACT SHEET

1560 Broadway, Suite 975, Denver, Colorado 80202

Who We Are

The Colorado Division of Banking (Division) protects the public interest and preserves public trust in the Colorado banking industry by regulating the business of state-chartered commercial banks and trust companies, state-licensed money transmitters, and by enforcing the Public Deposit Protection Act (PDPA), Title 11, Article 10.5 of the Colorado Revised Statutes (C.R.S.).

About the PDPA

The PDPA is a Colorado state law re-enacted in 1989 to serve the taxpayers and citizens of Colorado by ensuring the expedited repayment of public funds held in deposit accounts (time, savings, or demand) in Division-approved banks in the event of default or liquidation of the bank holding the deposits.

The PDPA protects public deposits at approved banks above the FDIC insurance limit by requiring each approved bank to deliver eligible collateral to a Division-approved escrow institution to be held in safekeeping and pledged to the Division. Approved banks are monitored and examined by the Division, and the PDPA requires monthly reporting of public deposits and an annual audit.

The PDPA does not protect public fund investments.

Definitions

Official Custodian - PDPA

The PDPA definition of Official Custodian in Section 11-10.5-103(9), C.R.S. is:

(a) A designee with plenary authority, including control over public funds of a public unit which the official custodian is appointed to serve. For purposes of this paragraph (a), "control" includes possession of public funds, as well as the authority to establish accounts for such public funds in banks and to make deposits, withdrawals, or disbursements of such public funds. If the exercise of plenary authority over the public funds of a public unit requires action by or the consent of two or more putative official custodians, then such official custodians shall be treated as one official custodian with respect to such public funds.

(b) A designee, other than a designee described in paragraph (a) of this subsection (9), with authority, including control, over public funds of an entity, including the state of Colorado; any institution, agency, instrumentality, authority, county, municipality, city and county, school district, special district, or other political subdivision of the state of Colorado, including any institution of higher education; any institution, department, agency, instrumentality, or authority of any of the foregoing, including any county or municipal housing authority; any local government investment pool organized pursuant to part 7 of article 75 of title 24, C.R.S.; any public entity insurance pool organized pursuant to state statute; any public body corporate created or established under the constitution of the state of Colorado or any state statute; and any other entity, organization, or corporation formed by intergovernmental agreement or other contract between or among any of the foregoing. For purposes of this paragraph (b), "control" includes possession of public funds, as well as the authority to establish accounts for such public funds in banks and to make deposits, withdrawals, or disbursements of such public funds. If the exercise of authority over such public funds requires action by or the consent of two or more putative official custodians, then such official custodians shall be treated as one official custodian with respect to such public funds.

Official Custodian - FDIC

For FDIC insurance purposes, the Official Custodian, rather than the public unit itself, is insured as the depositor, per 12 C.F.R. 330.15(a)(1). The FDIC qualifications for an Official Custodian are set forth in 12 C.F.R. 330.15(b)(1):

(1) Qualifications for an "official custodian". In order to qualify as an "official custodian" for the purposes of paragraph (a) of this section, such custodian must have plenary authority, including control, over funds owned by the public unit which the custodian is appointed or elected to serve. Control of public funds includes possession, as well as the authority to establish accounts for such funds in insured depository institutions and to make deposits, withdrawals, and disbursements of such funds.

Public Funds

All funds of a public unit and all funds of any entity referred to in Section 11-10.5-103(9)(b), C.R.S.

Public Unit

The state of Colorado, any county, city and county, city, or municipality, including any home rule city or town or territorial charter city, or any political subdivision thereof.

Methods of Protection

FDIC Insurance

The Federal Deposit Insurance Corporation (FDIC) provides deposit insurance protection, up to established thresholds, pursuant to 12 C.F.R. Section 330.15. Each separate public unit's Official Custodian (not each separate deposit account) is insured up to \$250,000 for the aggregate amount of all time and savings deposit accounts and up to \$250,000 for the aggregate amount of all demand deposit accounts. These insurance limits are per bank, not per branch of the same bank. In addition, deposit accounts containing qualifying trust, pension, and municipal bond redemption funds are separately insured on a per-beneficiary basis if FDIC requirements are met. Please contact the FDIC Deposit Insurance Call Center with questions concerning FDIC coverage (1-877-275-3342). If an entity is not a public unit as defined in Section 11-10.5-103(13), C.R.S., but is an entity described in Section 11-10.5-103(9)(b), C.R.S., the entity is insured up to \$250,000 for the aggregate amount of all demand deposit and time and savings accounts.

Pertaining to government depositors, the FDIC defines 'time and savings' deposits to include time/certificates of deposit (CDs), savings, negotiable order of withdrawal (NOW) accounts and money market deposit accounts but does not include interest-bearing demand deposit accounts (which were permitted after July 21, 2011). The FDIC defines 'demand deposits' to include both interest-bearing and noninterest-bearing deposits that are payable on demand and for which the depository institution does not reserve the right to require advance notice of an intended withdrawal.

Pledged Collateral

The PDPA requires each approved bank to deliver readily marketable assets (typically securities) to an approved escrow institution to be held in safekeeping, pledged to the Colorado State Banking Board, to secure all uninsured public deposits held by the approved bank. If the bank holding the public deposits becomes insolvent, the Colorado State Banking Board, or a designee (typically the FDIC), will sell the pledged assets of the insolvent bank (if necessary) and distribute the proceeds to the Colorado public unit or entity's Official Custodian requiring reimbursement beyond the amount insured by the FDIC.

Responsibilities of the Official Custodian of a Public Unit or Entity

- Public funds must be deposited in an approved bank. A list of approved banks is available on the Division's website. It is unlawful for public funds to be deposited in an unapproved bank (Sections 11-10.5-111(1), C.R.S. and 11-10.5-111(4)(b), C.R.S.).
- Prior to opening a bank account, the public unit or entity's Official Custodian must apply to the Division for Official Custodian Identification Numbers (PDPA Numbers). PDPA Numbers are established via a "Notice of Assignment of Official Custodian Public Deposit Protection Act Identification Numbers" (Notice of Assignment) that includes unique numbers for approved banks to identify and report public deposits (Section 11-10.5-111(2) and (3), C.R.S.).
- Prior to opening a bank account, the approved bank must be informed by the Official Custodian that public funds will be deposited and are subject to the PDPA (Section 11-10.5-111(2) and (3), C.R.S.). The Notice of Assignment should be provided to the approved bank.
- It is the responsibility of the Official Custodian to maintain documents or other verification necessary to properly identify public deposits (Section 11-10.5-111(2), C.R.S.), including notifying the Division of changes to the Official Custodian, unit or entity's name and address, and any changes to special accounts including bond, trust, pension, and commingled fund accounts.

Determining Official Custodian Compliance

- Ensure public deposits are held at an approved bank. The Division refers to approved banks as "Eligible Public Depositories." A current list is available on the Division's website at banking.colorado.gov. Click the "PDPA" tile. On the next page, click the "List of Eligible Public Depositories" link. On the next page, select "PDPA Eligible Depositories" from the Institution Type dropdown, then click Search. If your bank is not listed, please contact DORA_PDPA@state.co.us for assistance.
- Ensure the Official Custodian has been assigned a PDPA Number for each public unit or entity. A list of assigned PDPA Numbers is available on the Division's website at banking.colorado.gov. Click the "PDPA Numbers" icon along the top row. If your public unit or entity cannot be located, or if "Application Required" is listed, please contact DORA_PDPA@state.co.us for assistance.
- Ensure you have notified all approved banks that public funds are on deposit and that a copy of the Notice of Assignment has been provided. If you cannot locate your Notice of Assignment, or it is no longer accurate, please contact DORA_PDPA@state.co.us for assistance.
- Notify the Division, and approved Bank, of changes (i.e., name changes, consolidations, Official Custodian changes, etc.) to ensure records are up to date. Please email DORA_PDPA@state.co.us to update your records.

The Risk of Non-Compliance

Compliance with the PDPA by using only approved banks is paramount for the additional protection granted by the pledging of collateral to protect deposits greater than the FDIC insurance limit. By using an approved bank, in the unlikely event of a bank failure, the Division and the FDIC will work collaboratively in restoring access to your public funds. By not complying with the PDPA, additional protection above the FDIC insurance limit is limited. This situation would have detrimental impacts on Colorado taxpayers, public units and entities, and provided services.

How to Verify Bank Reporting of Public Deposits

The Official Custodian may contact the Division at DORA_PDPA@state.co.us to ensure its public unit or entity's deposits are being reported by the approved bank. Additionally, the Division recommends establishing a close business relationship with the approved bank and notify the bank in advance of large, incoming deposits.

Responsibilities of the Eligible Public Depository (Approved Bank)

- Obtain certification under the PDPA to hold public deposits. The application is available on the Division's website.
- Enter into a Deposit/Pledge agreement with an approved escrow institution to maintain pledged collateral in accordance with the requirements of Section 11-10.5-108(2), C.R.S. and the Banking Board's pledging and releasing procedures.
- Deliver eligible collateral, with Division approval, to an approved escrow institution and pledge that collateral to the Colorado State Banking Board to protect uninsured public deposits. The total market value of all pledged collateral must be in excess of 102% of the bank's aggregate uninsured public deposits. Higher collateral percentages may be required per Banking Board Rule PDP5.
- Each month, submit the Monthly Public Depository Liability Report to the Division.
- Arrange to have an annual audit or directors' examination conducted by an independent person for compliance with the PDPA" with: with PDP8 and Section 11-10.5-109(2), C.R.S. Submit a copy of the PDPA audit or directors' examination report with the Division within required timelines.
- Make all records available to examiners of the Division for periodic inspection for compliance with the PDPA and pay all associated assessments and examination fees.
- Do not accept or receive public funds if the bank is not certified to hold public deposits or under verbal or written orders from the Colorado State Banking Board to not accept or receive public funds.

Should you have any questions, please contact the PDPA Department at DORA_PDPA@state.co.us or by phone at 303.894.7575.