

Client Alert: Update on the New Ohio Pooled Collateral Program for Public Funds

Related Industries

Financial Institutions

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Purpose and Highlights of the Program

As we discussed in our [Fall 2016 issue](#) of *The Bankers Statement*, the landscape of collateral requirements for public fund deposits in Ohio is changing. Under revisions to the Ohio Depository Act (the act), the Ohio Treasurer of State (the treasurer) has developed proposed rules and a new program for the pledging of pooled collateral for public deposits, referred to as the Ohio Pooled Collateral Program (the program). The program is designed to streamline the procedures for collateralization of public deposits, taking advantage of technology and centralized monitoring and oversight of collateral. The program will also provide safeguards against fraud and shift the burden of managing and processing pledged collateral to the State of Ohio. Under the program, all pooled collateral will be pledged to the treasurer, rather than the individual public entities, and the collateral will be held by a trustee authorized by the treasurer to hold the collateral for the benefit of the public depositors. The treasurer will be responsible for monitoring the eligibility and value of the pooled securities. A public depository must receive written authorization from the treasurer to substitute, exchange or release eligible securities deposited with the depository's qualified trustee.

The program still allows each public entity to choose the financial institution with which it prefers to deposit its funds from among all financial institutions authorized by the state to hold public funds. A public entity may still choose to deposit funds with a financial institution participating in the program but require separate collateral for that entity's deposits that exceed applicable Federal Deposit Insurance Corporation coverage for funds, to be deposited through a separate collateral account in the program. The program also still permits participating financial institutions to choose one or more authorized trustees to hold collateral pledged through the program.

A benefit of the program for financial institutions is that the minimum market value of the pooled securities will be either 102% of the total amount of public deposits held by a participating financial institution OR an alternative amount specified by the treasurer. The treasurer may, after analysis of many factors related to an analysis of the financial institution and its performance within the program, permit a rate as low as 50%. A financial institution may choose to secure deposits at the 102% rate or apply for a lower rate.

Current Status

The act required that the treasurer have the program in place by July 1, 2017. A number of financial institutions volunteered to participate in a test of the system set up for the program, but, in fact, as of July 1, the system was not up and running. The treasurer required, however, that a financial institution accepting deposits from an Ohio state or local public entity must either be in compliance with the requirements of the act for the provision of separate collateral for each public deposit held by the institution and cease providing any pooled collateral by July 1, 2017, OR file with the treasurer before July 1, 2017, a letter of intent to apply to participate in the program by December 31, 2017. As the deadline for filing such letters of intent has passed, any public depository that has not filed such a letter is now required to comply with the separate collateral requirements established by law for public depositories not participating in the program. Any public depository holding public deposits and pledging separate collateral – non-pooled -- was not required to submit such a letter of intent but may choose to apply to participate in the program at any time in the future.

The treasurer's office has made available on its website proposed rules, which have been submitted to the Joint Committee on Agency Rule Review (JCARR), and operating policies. The treasurer's office has also started posting to its website some documents necessary for public depositories and trustees to participate in the program, but, as of July 26, 2017, others are indicated to be "coming soon." The form of application for a financial institution to participate has been posted, but the operating policies indicate that there will also be an agreement which must accompany the application, and the form of agreement has not yet been posted. The website indicates that approval of the rules by JCARR is expected in August 2017. Some forms apparently will not be posted until the rules are approved by JCARR.

Preparation for Participation

While waiting for the rules to be finalized and other forms to become available, financial institutions intending to participate in the program would be wise to take steps to prepare, including reviewing the operating policies. One step that may require some time is review and revision of agreements currently in place with public units and trustees. The operating policies indicate certain specific requirements for such agreements, and the forms of agreement currently used by many financial institutions probably are not consistent with participation in the program in a variety of respects. Institutions may also want to consider which of its employees will be responsible for setting up its information technology system to coordinate with that of the Treasurer and for daily submission of collateral information via the program's secure portal. Each financial institution will need to identify one person in charge of each such role when applying to participate.

Please contact your Vorys attorney with any questions about this new program or for assistance with preparation for participation in the program.