



State of New Mexico Office of the State Auditor

August 22, 2024

TO: New Mexico Counties and New Mexico Municipal League

Attn: County Treasurers, Municipal Treasurers, Finance Directors/Chief Financial Officers,
and County/City Managers:

Re: Alert: Federal Deposit Insurance Corporation Official Custodians and Collateralization
of Public Money Deposits

(Sent via e-mail)

The Office of the State Auditor (“OSA”) issues this alert to remind agencies and local public bodies that the OSA’s independent public accountants (“IPAs”) will be testing for compliance with Public Monies Act requirements for collateralization of deposits of public funds in banks and savings and loan associations that have been designated as depositories of public money.

Particularly with respect to Federal Deposit Insurance Corporation (“FDIC”) insurance, all bank accounts with balances above the FDIC insurance limit of \$250,000 must be collateralized consistent with state law (*see*, NMSA 1978, § 60-10-17¹).

Pursuant to NMSA 1978, § 12-6-5, IPAs will be issuing findings to agencies or entities that have bypassed these collateral requirements by designating multiple employees or elected officials as “official custodians” with “plenary authority” for the purposes of the FDIC rules. (*See*, 12 C.F.R. § 330.15(b)(1).)

This practice is not consistent with state or federal law. For municipalities, plenary authority over municipal funds lies with the municipal treasurer, pursuant to Section 3-37-3 NMSA 1978, who is the only official custodian unless otherwise specifically provided by municipal ordinance. Similarly, plenary authority over county funds lies with the county treasurer, who is the only official custodian of county funds pursuant to Section 4-43-2 and Section 6-10-8 NMSA 1978.

¹ [6-10-17](#). **Amount of security to be deposited.**

Any bank or savings and loan association designated as a depository of public money shall deliver securities of the kind specified in Section [6-10-16](#) NMSA 1978 to a custodial bank described in Section [6-10-21](#) NMSA 1978 and shall then deliver a joint safekeeping receipt issued by the custodial bank to the public official from whom or the public board from which the public money is received for deposit. The securities delivered shall have an aggregate value equal to one-half the amount of public money to be received in accordance with Subsection B of Section [6-10-16](#) NMSA 1978. However, any such bank or savings and loan association may deliver a depository bond executed by a surety company as provided in Section [6-10-15](#) NMSA 1978 as security for any portion of a deposit of public money.

Office of the State Auditor

OSA

August 19, 2024

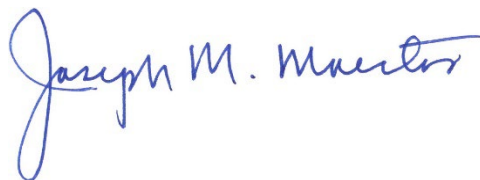
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This Office and the Office of the State Treasurer of New Mexico issued [a joint advisory](#) on May 22, 2023, to provide clarification to ensure that public funds are appropriately collateralized. High-profile bank failures around the country raised serious concerns about the need to safeguard cash in banks when balances are greater than the \$250,000 insured by the FDIC. New Mexico law requires collateralization to safeguard deposits; however, it came to the Agencies' attention that collateralization laws and FDIC guidance were not being followed consistently by all entities and depositories of public money.

The OSA further reminds IPAs, agencies, local public bodies, and depositories that, pursuant to state law (*see*, NMSA 1978, § 6-10-17.1²), entities must request that the depository cure noncompliance with the securitization or collateralization requirements of Section 6-10-17 NMSA 1978 within ten (10) calendar days or the entity must withdraw all public moneys under the entity's control from that depository within another ten (10) calendar days.

The OSA trusts that this Alert will direct attention to the importance of the underlying issue – safeguarding public funds. Additionally, the OSA hopes clarification of these issues can further assist agencies in reviewing and revising their internal procedures and policies to ensure compliance with their legal responsibilities. If any entity has additional questions or concerns regarding this issue, please reach out to this office.

Respectfully,



Joseph Maestas, P.E., CFE
New Mexico State Auditor

² **6-10-17.1. Noncompliance with collateral requirements; withdrawal of public funds.**

When a treasurer, board of finance or board of control finds that a bank or savings and loan association that has been designated as a depository of public money has not maintained qualifying securities as collateral for deposits of public money under the control of that treasurer or board as required by law, the treasurer or board shall request the depository to substitute or provide additional qualifying securities to meet those requirements within ten calendar days. If the bank or savings and loan association does not comply with the request within ten calendar days, the treasurer or board shall withdraw from that depository within the next ten calendar days all deposits of public money under the treasurer's or board's control without penalty to the public depositor, notwithstanding any other provision of law to the contrary.