

Investing and Protecting Public Funds



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STATE COMPTROLLER
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Local Government and
School Accountability

OPERATIONS SERIES

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Investing and Protecting Public Funds

A sound program for protecting public funds requires prudent strategies, including procedures to ensure the safety of investments and deposits while maximizing earnings on any money that is not required for operations. Investing involves both opportunities and risks, and officials must ensure the safety of public funds while striving to maximize yield. A sound investment and cash management system should ensure that sufficient liquidity is available to support operations and that investments follow the statutory framework established for local governments in New York State. To keep public funds safe, officials and cash managers need to understand the requirements they must comply with and the investment limitations and safeguards required of local government investments and deposits.

A sound investment and cash management system should ensure that sufficient liquidity is available to support operations, and that investments follow the statutory framework established for local governments in New York State.

This guide includes the following sections about the fundamentals of investing and protecting local government funds in New York State:

- Prudence in Investments
- Actively Monitor Cash Flow
- Investment of Public Funds
- Protection of Deposits and Investments
- Investment Policy
- Other Topics

In this guide, the term “local governments” generally refers to all municipal corporations (towns, counties, villages and cities), as well as school districts and boards of cooperative education (BOCES), district corporations (e.g., fire districts), special improvement districts governed by a separate board of commissioners, industrial development agencies (IDAs) and public libraries.

Please note that the information presented in this guide is general in nature and may not necessarily apply to every situation you encounter. Local officials should use good judgment in applying this information to specific situations and circumstances and contact their legal counsel for additional guidance.

Prudence in Investments

The investment of available funds is an opportunity for local governments to generate additional revenue. Failing to invest idle cash is equally as costly as paying an excess amount for a commodity, entering into an unneeded contract for services or issuing unnecessary debt. The fundamental principles concerning the deposit and investment of public funds have repeatedly been expressed by the Office of the State Comptroller (OSC) in the following maxim:

Investment-related policies and procedures must be tailored to the needs of each particular local government.

An investment program involving public moneys must have our basic ingredients—legality, safety, liquidity, and yield.

Public officials should be familiar with both the nature of their deposit and investment authorizations and with the type of safeguards that should be taken to prevent the loss of principal and interest. An important point to remember is that whenever investment decisions are made, the moneys invested must be available when needed to pay the expenditures for which such moneys were obtained or provided.

Prudence in investments requires work. Investment-related policies and procedures must be tailored to the needs of each particular local government. The guidelines included in this publication offer a roadmap for officials concerned about the safety of public funds. In short, the path to prudent cash management and investment practices includes the following:

- A formal investment policy,
- Knowledge of legal authority,
- An updated cash flow projection,
- Authorized depositaries and investments,
- Good documentation,
- Portfolio monitoring and
- Reporting to management and the governing board.

When implemented, these types of policies and procedures will help to lower investment risk while increasing the opportunities for higher investment earnings.

Actively Monitor Cash Flow

One of the basic tools used to effectively manage cash and investments is the cash flow forecast. A cash flow forecast provides an estimate of the amount of cash that will be available for investment during the fiscal year and on a month-to-month basis. It is also useful in determining whether short-term borrowing will be needed to finance temporary cash deficits. Cash flow statements may cover any period of time, but they are most effective when they cover a 12-month budget period or fiscal year.

A cash flow forecast projects the timing and amounts of specific (major) cash receipts and disbursements. These receipts and disbursements can be characterized as either recurring or nonrecurring. Recurring flows are those that can be predicted on a regular basis, such as sales tax revenues or payroll disbursements. Nonrecurring flows generally result from one-time programs, such as capital projects or the sale of an asset, and are relatively unpredictable. A cash flow forecast should include all major recurring flows and any major nonrecurring flows that are reasonably predictable.

A local government's annual financial report and budget document provide information about the nature of various revenues and expenditures. Bank statements and other records will provide information regarding the timing of such revenues and expenditures. Comparing cash revenues (and the receipt of accrued revenues) to cash disbursements for one to two years will reveal basic, recurring cash inflow and outflow patterns. Once identified and quantified, these patterns can be used to develop a cash flow projection.

Seasonal services and activities may affect cash flow patterns. For example, many localities provide summer youth recreation programs. In the summer months, part-time employees are needed to provide this service. This results in an increase in payroll expenditures, for which additional cash is needed. By the end of the fiscal year, State aid or other receipts may fully or partially offset these expenditures. However, because cash must be available to meet payrolls as they come due, temporary borrowing may be necessary or investments may need to be liquidated. Cash flow projections are an effective tool for ensuring that sufficient cash is available when needed for routine operations. Cash flow projections are also useful in the financial management of large capital projects, which typically extend across multiple fiscal years.

Cash flow problems may result from the nature of the collection process. Some local governments collect real property taxes in installments or bill for sewer and water fees on a semiannual basis, which can create cash flow problems if demands for cash early in their fiscal year exceed cash receipts. By the end of the year, this problem generally corrects itself, but for several months, sufficient cash may not be available. Annual cash flow projections assist the chief fiscal officer in identifying periods with negative cash flows, which may require temporary borrowings. Tax or revenue anticipation notes can be issued in certain circumstances to ensure adequate cash availability for operations.

A cash flow forecast provides an estimate of the amount of cash that will be available for investment during the fiscal year and on a month-to-month basis.

On the other hand, if taxes are collected near the beginning of the fiscal year, receipts may exceed disbursements and a cash balance may be available for investment. A cash flow projection will show how much cash should be available early in the fiscal year and for how long this cash can prudently be invested.

Cash flow forecasts should be updated regularly to reflect actual results. Significant differences between original estimates and actual results may require changes in the original investment and borrowing plan. The cash flow forecast should also be updated for any unanticipated events that affect the timing and amount of receipts and disbursements. At the end of the year, projected results should be compared with actual results and any significant variances investigated and, if appropriate, adjusted for in next year's cash flow forecast.

Preparing your first cash flow forecast will be time-consuming and challenging, but well worth the effort. Using the information provided by a cash flow forecast, investment strategies and decisions will be based upon realistic projections of idle cash. A sample cash flow forecast has been included in Appendix A.

A cash flow projection will show how much cash should be available early in the fiscal year and for how long this cash can prudently be invested.

Investment of Public Funds

Authority to Invest

The chief fiscal officer or other officer having custody of moneys may temporarily invest moneys not required for immediate expenditure if authorized by the governing board of the local government in a manner consistent with its investment policy.¹ Essentially, any officer who holds and is responsible for local government moneys is a custodian of moneys and can be authorized to invest such money.

Although the law permits multiple officers to have the authority to invest, we strongly encourage governing boards to delegate this responsibility to one officer, preferably the chief fiscal officer. Consolidation of the investment function in one office will enhance accountability and investment results.

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Types of Authorized Investments

Local governments have a limited number of investment options available to them. Consistent with maintaining the safety and liquidity of cash assets, local governments are authorized to invest money temporarily in:

- Time deposit accounts in a bank or trust company located and authorized to do business in New York State,²
- Certificates of deposit issued by a bank or trust company located and authorized to do business in New York State and
- Certain types of obligations as specified below.

Regardless of the type of investment utilized, the principal and interest from investments must be available to meet, when needed, the expenditures for which the moneys were obtained. A cash flow projection will assist the chief fiscal officer in the coordination of investment maturities with cash outflow requirements.

Time Deposit Accounts – Time deposit accounts are interest bearing and for this purpose include, for example, NOW (negotiable order of withdrawal) accounts and money market deposit accounts. As a general rule, whenever a public officer is authorized or required to deposit (as opposed to invest) money received in an official capacity, the officer may use a checking account or a NOW account. Depositing directly into an interest-bearing account will generate additional interest, but withdrawal limitations can restrict the availability of moneys deposited into these types of accounts.

Certificates of Deposit – Certificates of deposit (CDs) are used by many governments because of their familiarity, direct issuance by traditional depositories, and flexible maturities. CDs are purchased for specific periods of time that may be as short as seven days or as long as a year or more.

Obligations – Local governments may also invest in “obligations” such as bonds, notes or other such forms of indebtedness issued by certain specific entities. Generally, obligations of the United States, the State of New York, and, in certain cases, New York State local governments are permissible investments. Obligations of the U.S. Government include Treasury Bills (T-Bills) and Treasury Bonds and Notes.

The term “obligations of the United States” should not be confused with the term “obligations of federal agencies.” The two are not synonymous. A local government may invest in obligations of agencies of the United States only if payment of principal and interest is guaranteed by the federal government. There are numerous federal agencies that may issue obligations guaranteed by the federal government. Be sure to obtain confirmation that such obligations are guaranteed by the federal government.

Local governments cannot invest in their own obligations except that certain reserve fund moneys may be invested in obligations of the local government that established the reserve fund.³ And, in the case of capital reserve funds established for a town or county improvement district, those reserve fund moneys may be invested in the obligations issued by the town or county for purposes of that district.

Local governments may also invest in “obligations” such as bonds, notes or other such forms of indebtedness issued by certain specific entities.

Purchasing and Redeeming Obligations –

When a local government purchases an authorized obligation for investment purposes, the obligation must be payable or redeemable at the option of the local government within such times as the proceeds will be needed to meet expenditures for the purposes for which the funds were provided. In the case of obligations purchased with the proceeds of bonds or notes, the obligation must be payable or redeemable, in any event, within two years of the date of purchase. Any obligation that provides for the adjustment of its interest rate on set dates is deemed to be payable or redeemable for this purpose on the date that the principal amount can be recovered through demand by the holder of the obligation.

Once the range of permitted investments has been determined, the chief fiscal officer (or other authorized officer) must carefully assess the safety, liquidity and yield of possible investments in relation to the particular circumstances of the local government to arrive at a prudent investment strategy.

Unless the obligations are registered or inscribed in the name of the local government, obligations must be purchased through, delivered to and held in the custody of a bank or trust company pursuant to a written custodial agreement.⁴ Obligations may be purchased, sold or presented for redemption or payment by the custodial bank or trust company only upon prior written authorization from the officer authorized to make the investment. All such transactions must be confirmed in writing by the bank or trust company to the local government.

The bottom line with investments in obligations is that, while these obligations may be legal to invest in, some are more appropriate to invest in than others. Once the range of permitted investments has been determined, the chief fiscal officer (or other authorized officer) must carefully assess the safety, liquidity and yield of possible investments in relation to the particular circumstances of the local government to arrive at a prudent investment strategy.

Diversification of Investments

While there are a limited number of investment options which will provide the necessary safety and liquidity of public funds, local governments should not ignore the prudence of diversifying investments. A diversified portfolio provides an additional measure of safety and liquidity and reduces the risk of loss resulting from an over concentration of assets in a specific institution, a specific instrument or on a specific maturity date. Governing boards are required to set forth standards for diversification of investments in their policies with respect to the type of investments and the firms (including banks or trust companies) with which they transact business. Local governments should consider setting parameters as to the maximum amounts or percentages in any one type of investment or with any one firm and the length of maturities. Just because you select one bank or trust company as your primary depository does not mean you have to use the same bank to handle all or part of your investments. Diversifying your deposits and investments among different institutions will provide an added measure of protection if unforeseeable events occur. Concentrating all your deposits and investments in the same basket will expose a local government to increased risks if that institution were to become insolvent. The size of your investment portfolio and the expertise of your investment staff can help guide the level of diversification best suited for your local government.

Investment Advisory Services

While the governing board has the authority to delegate investment responsibilities only to the chief fiscal officer or other officer(s) having custody of moneys, a local government is not precluded from contracting for the services of experts to assist in making investment decisions. Investment advisors may be retained as long as the appropriate designated local government officer or the governing board, as the case may be, retains ultimate control over investment decisions. Agreements with investment advisors may not provide for the delegation of any duties or responsibilities of public officials that involve the exercise of judgment or discretion to the advisor. The governing board, the chief fiscal officer or other officer to whom the investment function has been delegated must carefully review recommendations made by an advisor to determine their propriety. Investment advisory services should be procured pursuant to the local government's procurement policy. A procurement policy generally should require a request for proposals process for this type of service.⁵

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Investments of Bond and Note Proceeds – Arbitrage

Local governments may be exposed to a potential liability to the Federal Treasury in certain cases for “arbitrage” earnings and, in some cases, interest on bonds or notes may become taxable to their holders. Arbitrage occurs when a local government borrows money at one interest rate and invests the proceeds at a higher interest rate. The excess interest earned under certain circumstances may become payable to the Federal Treasury if the transactions do not comply with federal rules.⁶ In the case of certain violations of the rules, interest may become taxable to the holders who thought they were buying tax-exempt obligations.

Questions concerning arbitrage interest earning restrictions, and other restrictions on the deposit and investment of bond and note proceeds, should be referred to your bond counsel.

To investors in the private sector, borrowing at a low interest rate to invest at a higher interest rate may seem managerially prudent. However, OSC has long held the position that borrowing for the sole purpose of investing is contrary to public policy and may constitute an abuse of the tax-exempt feature of local government borrowings. Questions concerning arbitrage interest earning restrictions, and other restrictions on the deposit and investment of bond and note proceeds, should be referred to your bond counsel.

Certain Unauthorized Investments

While money market *deposit accounts* with a bank or trust company are permissible investment options, there is no authorization for local governments (other than New York City) to invest in money market *mutual funds* (or any other mutual fund) or in unit investment trusts.⁷ Local governments also may not invest in the stock or bonds of private corporations. And local governments are not authorized to make deposits or invest with savings banks, savings and loan associations and credit unions, except in limited circumstances.⁸

Creditworthiness of Financial Institutions

The ability of a local government to evaluate financial institutions will be greatly influenced by the amount of staff and other resources available to the board or the investing officer. Factors to be considered by the local government include oversight or regulatory constraints on the institution, creditworthiness as reported by independent rating agencies, reputation and the local government's familiarity with the institution.

The primary concern of the local government is that all financial institutions with which it does business must be creditworthy. Local governments may request their depositories to provide their most recent Consolidated Report of Condition (call report), or may find copies of those reports at <https://cdr.ffiec.gov/public/>. Call reports contain financial information on bank and trust company revenues, expenses and balance sheet positions.

Before investment decisions are made, the governing board or chief fiscal officer (or any other officer delegated the authority to invest) should understand the risks and potential rewards associated with the investment options being considered. If you are considering any investment not discussed in this guide, you should confer with your locality's legal counsel. Remember, the axiom of legality, safety, liquidity and yield should guide your selection of investments for idle public moneys.

The ability of a local government to evaluate financial institutions will be greatly influenced by the amount of staff and other resources available to the board or the investing officer.

Protection of Deposits and Investments

Ensuring adequate security for deposits and investments with banks and trust companies is a priority for local government officials. Adequate security protects local governments (to the greatest extent possible) from suffering losses in the event of a bank or trust company failure or other conditions resulting in an inability to access public funds in these institutions. All public deposits and investments in banks or trust companies that exceed the amounts insured under the provisions of the Federal Deposit Insurance Act (FDIC) must be secured, in accordance with statutory requirements.⁹

Adequate security protects local governments (to the greatest extent possible) from suffering losses in the event of a bank or trust company failure or other conditions resulting in an inability to access public funds in these institutions.

Insurance coverage provided by FDIC does not apply to local government investments in authorized obligations.

FDIC Coverage – FDIC coverage is provided for local government deposits and investments. Currently, FDIC coverage is \$250,000 for demand deposits (e.g., “traditional” checking accounts) and \$250,000 for time and savings deposits (including NOW accounts). Regulations of the FDIC state that FDIC coverage amounts apply to each “official custodian”¹⁰ of funds of any county, municipality or political subdivision depositing such funds in an insured bank located in the same state as the local government or school district.

The amount of FDIC coverage may vary according to the situation in each local government. The examples that follow are for illustrative purposes only and relate to the maximum amount of FDIC coverage currently in effect. It may be advisable to discuss the amount of FDIC coverage with the bank or trust company in which the account is located. Questions regarding the application of FDIC law and regulations and their impact on your coverage should be addressed directly to the Federal Deposit Insurance Corporation at www.fdic.gov.

Let's say you have two custodians, the treasurer and the clerk, both of which deposit public moneys in the same bank. In both examples which follow, insurance coverage is attributed to each official custodian individually.

1. The treasurer has 10 demand accounts amounting to \$300,000 and three time and savings accounts amounting to \$500,000. How much FDIC coverage does the treasurer have and what is the excess over FDIC coverage?

Treasurer			
	Amount		Amount
Aggregate of demand accounts	\$300,000	Aggregate of time and savings accounts	\$500,000
Less: FDIC coverage	(\$250,000)	Less: FDIC coverage	(\$250,000)
Amount in excess of FDIC coverage	\$50,000	Amount in excess of FDIC coverage	\$250,000

Answer: The treasurer has a total of \$500,000 in FDIC coverage and the excess over FDIC coverage is \$300,000.

2. The clerk has 10 demand accounts amounting to \$120,000 and three time and savings accounts amounting to \$350,000. How much FDIC coverage does the clerk have and what is the excess over FDIC coverage?

Clerk			
	Amount		Amount
Aggregate of demand accounts	\$120,000	Aggregate of time and savings accounts	\$350,000
Less: FDIC coverage	(\$120,000)	Less: FDIC coverage	(\$250,000)
Amount in excess of FDIC coverage	\$0	Amount in excess of FDIC coverage	\$100,000

Answer: The clerk has a total of \$370,000 in FDIC coverage and the excess over FDIC coverage is \$100,000. Security for Deposits and Investments in Excess of FDIC Coverage

Security for Deposits and Investments in Excess of FDIC Coverage

When deposits or investments (at a bank or trust company) exceed FDIC coverage, any amounts not insured under the Federal Deposit Insurance Act must be properly secured. Local governments must obtain a pledge of eligible securities, or obtain other permissible security, to ensure that the amount of deposits and investments in excess of FDIC insurance will not be lost in the event of a bank or trust company failure or other events of default. Without the protections afforded by properly securing deposits and investments that exceed FDIC insurance, those moneys are at risk of loss should a bank or trust company failure or other event of default occur. Permissible means of securing deposits and investments consist of any one, or combination, of the following, subject to statutory requirements:

- A pledge of eligible securities,
- A pledge of a pro rata portion of a pool of eligible securities,
- An eligible surety bond,
- An eligible letter of credit and
- An irrevocable letter of credit issued by certain federal home loan banks.

While the law¹¹ lists a variety of instruments that are within the definition of “eligible securities,” local governments are not required to accept all of them. Some types of eligible securities may be more appropriate than others for individual local governments. Local governments should consult their attorneys and investment advisors regarding the types of eligible securities to include in their investment policies and security and custodial agreements.

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Pledge of Eligible Securities

Eligible securities pledged to secure local government deposits and investments must have an aggregate market value at least equal to the total amount of excess public deposits and investments under the control of the chief fiscal officer or other officers authorized to make deposits and investments.¹² Deposits and investments in excess of FDIC coverage may also be secured by a pledge of a pro rata portion of a pool of eligible securities having in the aggregate a market value at least equal to the total amount of public deposits and investments from all such officers within the State at the bank or trust company.

Generally, local governments should receive a statement of specific pledged securities or the securities that constitute the pledged assets of the pool at least monthly. A schedule of the types of eligible securities authorized by statute¹³ is included in the model investment policy in Appendix B. This schedule applies to both individual and pool pledges.

Deposit Placement Programs

Deposit placement programs allow local governments to authorize their designated depository bank or trust company to arrange for the “redeposit” of the local government’s funds, for the account of the government in one or more banking institutions.¹⁴ Under this program, an FDIC-insured bank or trust company divides a local government’s deposits into multiple deposits, all under the FDIC limit, and then deposits in that amount are made into other FDIC-insured banking institutions, thereby increasing the available FDIC coverage. At the same time, each of the banking institutions into which a piece of the original deposit was made makes a “reciprocal deposit” back into the bank or trust company that holds the local government’s original deposit.¹⁵ Local governments are also authorized to use deposit placement programs for investments.¹⁶

Deposit placement programs allow local governments to authorize their designated depository bank or trust company to arrange for the “redeposit” of the local government’s funds, for the account of the government in one or more banking institutions.

Other Methods for Securing Deposits and Investments

A pledge of eligible securities (or a pro rata portion of a pool of eligible securities) is the most common method for securing local government deposits and investments in excess of FDIC insurance. Other methods of securing excess funds, such as surety bonds and letters of credit, while permitted, are generally not as common. A brief description of these additional methods follows:

- An “eligible surety bond” must be executed by an insurance company authorized to do business in New York State, the claims-paying ability of which is rated in the highest rating category by at least two nationally recognized statistical rating organizations. The bond must be made payable to the local government as security for the payment of 100 percent of the aggregate amount of public deposits and investments from the local government and agreed-upon interest, if any.
- An “eligible letter of credit”¹⁷ for the payment of 140 percent of the aggregate amount of public deposits and investments from the local government and agreed-upon interest, if any.
- An “irrevocable letter of credit” issued in favor of the local government by a federal home loan bank whose commercial paper and other unsecured short-term debt obligations are rated in the highest rating category by at least one nationally recognized statistical rating organization, for the payment of 100 percent of the aggregate amount of public deposits and investments from the local government and agreed-upon interest, if any.

Written Agreements

When eligible securities (or a pro rata share of a pool of eligible securities) are pledged to secure the amount of deposits and investments in excess of FDIC insurance, the local government must enter into written security and custodial agreements with the depository and custodial bank(s) or trust company(s).

Security Agreement – A security agreement with the depository bank or trust company must provide that eligible securities (or a pro rata pool of such securities) are being pledged as security for local government deposits and investments, together with agreed-upon interest and any costs or expenses arising out of the collection of funds upon default. It must also provide the conditions under which the securities (or pro rata portion of a pool of securities) may be sold, presented for payment, substituted or released, and the events of default which will enable a local government to exercise its rights against the pledged securities. It may also contain any other provisions deemed necessary and sufficient to secure, in a satisfactory manner, the local government's interest in the collateral. Local governments should consider providing for a margin requirement in their agreements. This can serve as a hedge against price fluctuation. Under a margin requirement, the depository bank or trust company would pledge an amount in excess of 100 percent of the non-FDIC covered deposits and investments (e.g., 101-105 percent).

A security agreement with the depository bank or trust company must provide that eligible securities (or a pro rata pool of such securities) are being pledged as security for local government deposits and investments, together with agreed-upon interest and any costs or expenses arising out of the collection of funds upon default.

When deposit placement programs are used, security agreements and investment policies should be reviewed to ensure that, as necessary, they take into account the option to use a deposit placement program and they otherwise meet all legal requirements.

Custodial Agreement – A written custodial agreement with the custodial bank or trust company must provide the following:

- That the pledged securities (or pro rata portion of a pool of eligible securities) will be held by a custodial bank or trust company as agent of, and custodian for, the local government, and will be kept separate and apart from the general assets of the custodial bank or trust company.
- The manner in which the custodial bank or trust company will confirm the receipt, substitution or release of the collateral.
- The frequency of revaluation of collateral by the custodial bank or trust company. Ensuring that the market value of pledged securities is at all times adequate to cover the full amount of non-FDIC covered deposits and investments is critical. Depending on the potential volatility in market value of the pledged securities, providing in your agreements for valuation on a daily basis may be appropriate; however, at a minimum, valuations should be conducted at least once a month.
- For the substitution of collateral, when a change in the rating of a security causes ineligibility.¹⁸
- All provisions deemed necessary and sufficient to secure the local government's interest in the collateral and such other provisions as the governing board may deem necessary.¹⁹

The local government's legal counsel should review and opine on the sufficiency of the agreements used as to form and content, and their compliance with the requirements of the GML.

Written agreements provide the legal basis for ensuring a local government's access to pledged or purchased securities. A security agreement and a custodial agreement may be combined into a single agreement. The local government's legal counsel should review and opine on the sufficiency of the agreements used as to form and content, and their compliance with the requirements of the GML. Each local government should also determine that any agreements used are consistent with its investment policies.

To assist local governments, the State Comptroller has prepared model security and custodial agreements.²⁰ Please contact OSC's Division of Legal Services for additional information on security and custodial agreements.

Custodial Options

The custodial agreement may provide that the custodian of pledged collateral be the same bank or trust company that is holding the deposits or investments, or a local government may contract with an independent third-party bank or trust company to serve as custodian. It is important that the relative advantages and disadvantages of using the same or a different bank or trust company as custodian be carefully considered when making this decision. For example, some of the factors to be considered include the following:

- The use of an unaffiliated third-party custodian may help ensure that collateral will be available for immediate liquidation in the event of the depository's insolvency.
- The use of a third-party custodian can help ensure that the depository bank complies with collateral requirements because the custodian is responsible for confirming receipt of the collateral from the depository as well as ensuring that the depository bank transfers collateral from the account only under appropriate circumstances.
- The use of a third-party custodian for safekeeping carries a cost that should be considered in relation to the amount of deposits and investments that the local government has with a depository bank or trust company and the corresponding risk.
- When collateral is held by the depository bank or trust company, there is a greater burden on the local government to verify that the collateral is properly pledged, including that it has not been pledged to more than one customer.
- Whether or not the local government has the ability to monitor the creditworthiness of the depository bank or trust company.

The custodial agreement may provide that the custodian of pledged collateral be the same bank or trust company that is holding the deposits or investments, or a local government may contract with an independent third-party bank or trust company to serve as custodian.

Deposit Placement Programs

Local government deposits made using a deposit placement program must meet the following conditions:

- The local government’s depository bank or trust company must serve as custodian for the local government for the redeposited funds.
- The local government funds held in the depository bank or trust company in excess of FDIC coverage, pending redeposit, must be properly secured in accordance with the GML.
- The full amount of the redeposited funds, plus any accrued interest, must be covered by the FDIC.
- At the same time of the redeposit, the local government’s depository bank or trust company must receive an amount at least equal to the amount of the local government’s funds redeposited.

Deposit placement programs also can be used by local governments for temporarily investing moneys not required for immediate expenditure. As with local government deposits, the GML requires that investments, to the extent they are in excess of the amount insured by the FDIC, must be secured by, among other alternatives, a pledge of “eligible securities.” Local governments have the option of securing investments in a deposit placement program meeting similar conditions to those stated above for deposits of public funds.²¹

All of these factors should be considered when adopting your investment policy and establishing procedures to safeguard deposits and investments in excess of FDIC coverage.

Deposit placement programs also can be used by local governments for temporarily investing moneys not required for immediate expenditure.

Bank Responsibility

The Banking Law provides that whenever a local government is required by statute to obtain a pledge of security from a depository for public funds, banks must comply with the requirements of that statute so long as the local government has entered into a written agreement with the bank and notifies the bank of its public deposits in the manner required by the agreement.²² The written agreement between the bank and the local government should specify the minimum amount of security to be provided to the local government. Local governments should make sure that their security and custodial agreements are current and up-to-date to ensure that they receive the protection afforded by the responsibility placed on banks and trust companies.

Investment Policy

Each local government is required to adopt, by resolution, a comprehensive, written investment policy.²³ This policy details the local government's operative policy and provides instructions to officers and staff regarding investing, monitoring, and reporting "funds of the local government." For this purpose, "funds of the local government" means all moneys and other financial resources available for investment by the local government on its own behalf or on behalf of any other entity or individual.

Among the purposes of an investment policy are: to establish a prudent set of basic procedures to meet investment objectives; to assure that investment assets are adequately safeguarded and collateralized, if necessary; to establish and maintain internal controls and proper accounting records and to provide accurate reporting and evaluation of investment results.

At a minimum, an investment policy must address the following areas:

- Procedures for monitoring, controlling, depositing, and retaining investments and collateral,
- Standards for security agreements and custodial agreements with banks or trust companies authorized to do business in the State of New York, pursuant to which obligations and collateral are held,
- Permitted types of authorized investments,
- Standards for diversification of investments, including diversification with respect to type of investments and firms with which to transact business,
- Standards for qualification of firms with which the local government transacts business, such as criteria covering creditworthiness, experience, capitalization, size, and any other factors that make a firm²⁴ capable and qualified to transact business with the local government,
- Standards for written agreements pursuant to which investments are made and
- Procedures and provisions to secure in a satisfactory manner the local government's financial interest in investments.

To assist local governments in formulating an investment policy, OSC is required to formulate a "model investment policy," which is located in Appendix B.

Once an investment policy is developed, it must be formally considered by the governing board and adopted by resolution. Because the governing board is responsible for adopting the policy, it is important that board members understand the concepts that underlie the policy. After the resolution is adopted, it should be implemented immediately, and procedures should be developed using the policy as a framework. The policy should not be a static document but must be reviewed at least annually. Generally, the policy is reviewed by the governing body at the organizational meeting or soon thereafter. However, it should also be reviewed, and amended if necessary, whenever new investment legislation is enacted, as staff capabilities change, or as other external and internal issues dictate. The governing body has the power to amend the policy, at any time. If the policy is amended, the governing body must readopt the policy by resolution.

Other Topics

Cooperative Investments

Articles 5-G and 3-A of the General Municipal Law provide the authority for most local governments to enter into intermunicipal cooperation agreements to invest idle funds on a cooperative basis with other local governments, subject to certain requirements. Among many things, the agreements must be approved by the governing board of each participant, investments under the agreement must be among those authorized under the GML and all legal requirements must be met, including those relating to custody of obligations and collateral. In addition, there are certain statutorily required elements for “cooperative investment agreements.”²⁵

Before participating in a cooperative investment program, you should consult your locality’s attorney to ensure the legality, safety, and liquidity of all moneys invested on a cooperative basis.

Before participating in a cooperative investment program, you should consult your locality’s attorney to ensure the legality, safety and liquidity of all moneys invested on a cooperative basis.

Repurchase Agreements

A repurchase agreement (REPO) is a transaction in which a local government purchases authorized obligations from a trading partner. Simultaneously, the local government agrees to resell and the trading partner agrees to repurchase the obligations at a future date. Local governments in New York State are authorized to engage in REPOs *only* pursuant to their authority to buy and sell the obligations that are the subject of the REPO. Consequently, it is important that local governments structure their REPOs as a purchase and sale and not as a “secured loan” or a “collateralized loan.”²⁶

Prices and dates for the sale and resale are agreed upon at the time of the initial purchase by the local government.²⁷ The obligations purchased under a repurchase agreement should only be those federal securities authorized by the GML.²⁸ The purchase price should *not* be the face value of the obligations. Instead, the purchase price should be the present market value plus any accrued interest not reflected in the market value of the securities.

For additional guidance on REPOs, see Appendix C.

Minimize Bank Accounts

Numerous bank accounts can complicate effective control of cash. Multiple bank accounts can result in frequent interbank transactions that can be expensive, as well as time-consuming to control. Minimizing the number of bank accounts also aids the chief fiscal officer or cash manager in ascertaining cash balances available for investment.

Bank accounts should be consolidated to the extent possible. A minimum number of bank accounts should be maintained consistent with applicable legal and accounting requirements. In certain situations, a separate checking accounting may be advantageous. For example, local governments frequently establish a single payroll account to consolidate the processing of all payroll checks and withholdings. Similarly, a single checking account is often established to process vendor checks approved for payment from several different funds.

Minimizing the number of bank accounts also aids the chief fiscal officer or cash manager in ascertaining cash balances available for investment.

Moneys generally may be commingled for investment purposes.²⁹ To minimize bank accounts, all excess moneys could conceivably be placed in one investment account as long as accurate accounting records are maintained to record the separate sources of all money. Interest earned would then be allocated based on the time and principal amount of each investment. However, before combining funds for investment purposes, local officials should carefully consider the benefits of diversification of investments, as previously discussed which can serve to reduce risks and increase the amount of FDIC insurance available.

Minimize Bank Service Costs

Bank fees can add up over time, particularly if you have multiple bank accounts that charge a monthly fee. Consolidate smaller bank accounts when feasible and consistent with legal and accounting requirements to minimize fees, while continuing to maintain separate accounting records for each fund. In addition, provide in your procurement policies and procedures for the issuance of a request for proposals (RFP) for banking services every three to five years. Banks continually refine their products and offerings, and an RFP can encourage competition to enable you to identify the most cost-effective banking services.

Official Undertaking/Bond

In some cases, statutes specifically require that certain officials file an official undertaking or bond.³⁰ To the extent not otherwise required by statute, the governing board should consider having the chief fiscal officer and all other appropriate officers and employees involved in the cash management operations be bonded. Be sure to determine the following:

- What coverage is provided in the event moneys or securities are transferred to an unauthorized account?
- Is there coverage if cash or bearer securities are converted to personal use?

Consult with your insurance agent or risk manager if there are any doubts about the adequacy of bonds or other insurance coverage. In addition, you should have your attorney review your insurance coverage to make sure that applicable legal requirements are met.

Each local government should have policies and procedures that protect against the risk that public money will be lost in the event of the failure of a depository bank or trust company or other event of default.

Conclusion

The investment and protection of public moneys is a high priority for many local government officials and managers. Each local government should have policies and procedures that protect against the risk that public money will be lost in the event of the failure of a depository bank or trust company or other event of default. There are many safeguards incorporated into New York State law. The governing board, chief fiscal officer, cash manager and any other custodians of local government moneys have a responsibility to be knowledgeable about these safeguards and to make sure that they are in place and working properly. Investing and securing public funds is a complex subject and we encourage consultation with your locality's legal counsel. We trust that the guidance included here will help local officials in promulgating sound policies and procedures pertaining to public investments and deposits.

We would be pleased to assist you with any questions you may have regarding the information contained in this guide. The addresses and telephone numbers of our regional offices and our legal staff are located at the end of this publication.

Appendix A:

General Fund Projected Cash Flow Statement

ESTIMATED RECEIPTS	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	TOTAL
Real Property Taxes	\$430,000	\$300,000	\$45,000										\$775,000
Non-Property Taxes			\$28,750				\$27,000			\$29,000		\$130,250	\$215,000
Departmental Income	\$4,000	\$4,000	\$4,000	\$4,100	\$4,200	\$4,200	\$4,300	\$4,100	\$4,000	\$4,200	\$4,400	\$4,500	\$50,000
State Aid			\$60,000			\$6,000	\$68,000		\$59,000		\$8,000	\$59,000	\$260,000
Federal Aid					\$2,500					\$3,200		\$44,300	\$50,000
Short-Term Borrowings									\$100,000				\$100,000
All Other	\$3,800	\$5,200	\$4,600	\$4,900	\$4,600	\$4,700	\$4,500	\$4,600	\$4,500	\$4,600	\$4,600	\$4,400	\$55,000
Total Estimated Receipts	\$437,800	\$309,200	\$53,600	\$97,750	\$11,300	\$14,900	\$103,800	\$8,700	\$167,500	\$41,000	\$17,000	\$242,450	\$1,505,000
ESTIMATED DISBURSEMENTS													
Payrolls	\$41,800	\$41,600	\$41,600	\$41,600	\$41,700	\$41,800	\$41,800	\$41,800	\$41,700	\$41,600	\$41,500	\$41,500	\$500,000
Employee Benefits	\$14,700	\$14,600	\$14,600	\$14,600	\$14,600	\$14,700	\$14,700	\$14,700	\$14,600	\$14,500	\$14,400	\$14,300	\$175,000
Debt Service					\$129,000					\$27,000			\$156,000
Short-Term Borrowing Repaid											\$100,000		\$100,000
All Other	\$43,000	\$42,000	\$63,000	\$40,000	\$40,000	\$45,000	\$41,000	\$43,000	\$43,000	\$43,000	\$41,000	\$41,000	\$525,000
Total Estimated Disbursements	\$99,500	\$98,200	\$119,200	\$96,200	\$225,300	\$101,500	\$97,500	\$99,500	\$99,300	\$126,100	\$96,900	\$196,800	\$1,456,000
Cash Balance Changes	\$338,300	\$211,000	(\$65,600)	\$1,550	(\$214,000)	(\$86,600)	\$6,300	(\$90,800)	\$68,200	(\$85,100)	(\$79,900)	\$45,650	\$49,000
Estimated Closing Cash Balance	\$407,350	\$618,350	\$552,750	\$554,300	\$340,300	\$253,700	\$260,000	\$169,200	\$237,400	\$152,300	\$72,400	\$118,050	\$118,050
Beginning Cash Balance 1/01/XX	\$69,050											Ending Cash Balance 12/31/XX	\$118,050

Appendix B:

Model Investment Policy

(Name of Local Government)

I. SCOPE

This investment policy applies to all moneys and other financial resources available for deposit and investment by the (unit of government) on its own behalf or on behalf of any other entity or individual.

II. OBJECTIVES

The primary objectives of the local government's investment activities are, in priority order:

- To conform with all applicable federal, State and other legal requirements (legality);
- To adequately safeguard principal (safety);
- To provide sufficient liquidity to meet all operating requirements (liquidity) and
- To obtain a reasonable rate of return (yield).

III. DELEGATION OF AUTHORITY

The governing board's responsibility for administration of the investment program is delegated to the (chief fiscal officer or other officer having custody of money) who shall establish written procedures for the operation of the investment program consistent with these investment policies. Such procedures shall include internal controls to provide a satisfactory level of accountability based upon records incorporating the description and amounts of investments, the fund(s) for which they are held, the place(s) where kept, and other relevant information, including dates of sale or other dispositions and amounts realized. In addition, the internal control procedures shall describe the responsibilities and levels of authority for key individuals involved in the investment program.

IV. PRUDENCE

All participants in the investment process shall seek to act responsibly as custodians of the public trust and shall avoid any transaction that might impair public confidence in the (unit of government) to govern effectively.

Investments shall be made with prudence, diligence, skill, judgment and care, under circumstances then prevailing, which knowledgeable and prudent persons acting in like capacity would use, not for speculation, but for investment, considering the safety of the principal as well as the probable income to be derived.

All participants involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program or which could impair their ability to make impartial investment decisions.

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V. DIVERSIFICATION

It is the policy of the (*unit of government*) to diversify its deposits and investments by financial institution, by investment instrument, and by maturity scheduling.

The governing board shall establish appropriate limits for the amount of investments which can be made with each financial institution or dealer, and shall evaluate this listing at least annually.

VI. INTERNAL CONTROLS

It is the policy of the (*unit of government*) for all moneys collected by any officer or employee of the government to transfer those funds to the (chief fiscal officer) within _____ days of deposit, or within the time period specified in law, whichever is shorter.

The (*chief fiscal officer, treasurer, or other officer having custody of money*) is responsible for establishing and maintaining internal control procedures to provide reasonable, but not absolute, assurance that deposits and investments are safeguarded against loss from unauthorized use or disposition, that transactions are executed in accordance with management's authorization, properly recorded, and managed in compliance with applicable laws and regulations.

VII. DESIGNATION OF DEPOSITARIES

The banks and trust companies that are authorized for the deposit of moneys, and the maximum amount which may be kept on deposit at any time, are:

Depository Name	Maximum Amount	Officer
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Appendix B:

Model Investment Policy

VIII. SECURING DEPOSITS AND INVESTMENTS

All deposits and investments at a bank or trust company, including all demand deposits, certificates of deposit and special time deposits (hereinafter, collectively, “deposits”) made by officers of (*the unit of government*) that are in excess of the amount insured under the provisions of the Federal Deposit Insurance Act, including pursuant to a Deposit Placement Program in accordance with law, shall be secured by:

(Local governments should select the method of collateralization they plan to utilize and omit other options from their adopted policy)

1. A pledge of “eligible securities” with an aggregate “market value” (as provided by the GML Section 10) that is at least equal to the aggregate amount of deposits by the officers. See Schedule A of this policy for a listing of “eligible securities.”
2. A pledge of a pro rata portion of a pool of eligible securities, having in the aggregate a market value at least equal to the aggregate amount of deposits from all such officers within the State at the bank or trust company.
3. An “eligible surety bond” payable to the government for an amount at least equal to 100 percent of the aggregate amount of deposits and the agreed-upon interest, if any, executed by an insurance company authorized to do business in New York State, whose claims-paying ability is rated in the highest rating category by at least two nationally recognized statistical rating organizations. The governing board shall approve the terms and conditions of the surety bond.
4. An “eligible letter of credit,” payable to the (*unit of government*) as security for the payment of 140 percent of the aggregate amount of deposits and the agreed-upon interest, if any. An “eligible letter of credit” shall be an irrevocable letter of credit issued in favor of the (*unit of government*), for a term not to exceed 90 days, by a qualified bank (other than the bank where the secured money is deposited). A qualified bank is either one whose commercial paper and other unsecured short-term debt obligations (or, in the case of a bank which is the principal subsidiary of a holding company, whose holding company’s commercial paper and other unsecured short-term debt obligations) are rated in one of the three highest rating categories by at least one nationally recognized statistical rating organization, or one that is in compliance with applicable federal minimum risk-based capital requirements.
5. An “irrevocable letter of credit” issued in favor of the (*unit of government*) by a federal home loan bank whose commercial paper and other unsecured short-term debt obligations are rated in the highest rating category by at least one nationally recognized statistical rating organization, as security for the payment of 100 percent of the aggregate amount of deposits and the agreed-upon interest, if any.

Appendix B:

Model Investment Policy

IX. COLLATERALIZATION AND SAFEKEEPING

Eligible securities used for collateralizing deposits made by officers of (*the unit of government*) shall be held by (the depository or a third party) bank or trust company subject to security and custodial agreements.

The security agreement shall provide that eligible securities (or the pro rata portion of a pool of eligible securities) are being pledged to secure such deposits together with agreed-upon interest, if any, and any costs or expenses arising out of the collection of such deposits upon a default. It shall also provide the conditions under which the securities (or pro rata portion of a pool of eligible securities) held may be sold, presented for payment, substituted or released and the events of default which will enable the local government to exercise its rights against the pledged securities.

In the event that the pledged securities are not registered or inscribed in the name of the (*unit of government*), such securities shall be delivered in a form suitable for transfer or with an assignment in blank to the (*unit of government*) or the custodial bank or trust company. Whenever eligible securities delivered to the custodial bank or trust company are transferred by entries on the books of a federal reserve bank or other book-entry system operated by a federally regulated entity without physical delivery of the evidence of the obligations, then the records of the custodial bank or trust company shall be required to show, at all times, the interest of the local government in the securities (or the pro rata portion of a pool of eligible securities) as set forth in the security agreement.

The custodial agreement shall provide that pledged securities (or the pro rata portion of a pool of eligible securities) will be held by the custodial bank or trust company as agent of, and custodian for, the (*unit of government*), will be kept separate and apart from the general assets of the custodial bank or trust company and will not be commingled with or become part of the backing of any other deposit or other bank liability. The agreement shall also describe how the custodian shall confirm the receipt, substitution or release of the collateral and it shall provide for the frequency of revaluation of collateral by the custodial bank or trust company and for the substitution of collateral when a change in the rating of a security causes ineligibility. The security and custodial agreements shall also include all other provisions necessary to provide the (*unit of government*) with a perfected security interest in the eligible securities and to otherwise secure the local government's interest in the collateral, and may contain other provisions that the governing board deems necessary.

Appendix B:

Model Investment Policy

X. PERMITTED INVESTMENTS

NOTE: This list is for purposes of illustration only. Governing boards, in the exercise of their prudent discretion, must determine which types of investments, authorized by law, to include as permitted investments. Note that the list below does not include all types of investments authorized by law.

As provided by General Municipal Law Section 11, the *(governing board of the unit of government)* authorizes the *(chief fiscal officer, treasurer, or other officer having custody of money)* to invest moneys not required for immediate expenditure for terms not to exceed its projected cash flow needs in the following types of investments:

- Special time deposit accounts in, or certificates of deposit issued by, a bank or trust company located and authorized to do business in the State of New York;
- Through a Deposit Placement Program, certificates of deposit in one or more “banking institutions”, as defined in Banking Law Section 9-r;
- Obligations of the United States of America;
- Obligations guaranteed by agencies of the United States of America, where the payment of principal and interest are guaranteed by the United States of America;
- Obligations of the State of New York;
- With the approval of the State Comptroller, obligations issued pursuant to Local Finance Law Section 24.00 or 25.00 (i.e., Tax Anticipation Notes and Revenue Anticipation Notes) by any municipality, school district or district corporation in the State of New York other than the *(unit of government)*; and
- Obligations of the *(unit of government)*, but only with moneys in a reserve fund established pursuant to General Municipal Law Section 6-c, 6-d, 6-e, 6-f, 6-g, 6-h, 6-j, 6-k, 6-l, 6-m, or 6-n.

All investment obligations shall be payable or redeemable at the option of the *(unit of government)* within such times as the proceeds will be needed to meet expenditures for purposes for which the moneys were provided and, in the case of obligations purchased with the proceeds of bonds or notes, shall be payable or redeemable in any event at the option of the *(unit of government)* within two years of the date of purchase. Time deposit accounts and certificates of deposit shall be payable within such times as the proceeds will be needed to meet expenditures for which the moneys were obtained, and shall be secured as provided in Sections VIII and IX herein.

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Except as may otherwise be provided in a contract with bondholders or noteholders, any moneys of the (*unit of government*) authorized to be invested may be commingled for investment purposes, provided that any investment of commingled moneys shall be payable or redeemable at the option of the (*unit of government*) within such time as the proceeds shall be needed to meet expenditures for which such moneys were obtained, or as otherwise specifically provided in General Municipal Law Section 11. The separate identity of the sources of these funds shall be maintained at all times and income received shall be credited on a pro rata basis to the fund or account from which the moneys were invested.

Any obligation that provides for the adjustment of its interest rate on set dates is deemed to be payable or redeemable on the date on which the principal amount can be recovered through demand by the holder.

XI. AUTHORIZED FINANCIAL INSTITUTIONS AND DEALERS

All financial institutions and dealers with which the (*unit of government*) transacts business shall be creditworthy, and have an appropriate level of experience, capitalization, size and other factors that make the financial institution or the dealer capable and qualified to transact business with the (*unit of government*). The (*chief fiscal officer, treasurer, or other officer having custody of money*) shall evaluate the financial position and maintain a listing of proposed depositories, trading partners, and custodians. Recent Reports of Condition and Income (call reports) shall be obtained for proposed banks, and security dealers that are not affiliated with a bank shall be required to be classified as reporting dealers affiliated with the New York Federal Reserve Bank, as primary dealers.

The (*unit of government*) shall maintain a list of financial institutions and dealers approved for investment purposes and establish appropriate limits to the amounts of investments that can be made with each financial institution or dealer.

Appendix B:

Model Investment Policy

XII. PURCHASE OF INVESTMENTS

The (*chief fiscal officer, treasurer, or other officer having custody of money*) is authorized to contract for the purchase of investments:

1. Directly, from an authorized trading partner
2. By participation in a cooperative investment agreement with other authorized municipal corporations pursuant to Article 5-G of the General Municipal Law and in accordance with Article 3-A of the General Municipal Law.

All purchased obligations, unless registered or inscribed in the name of the local government, shall be purchased through, delivered to and held in the custody of a bank or trust company. Such obligations shall be purchased, sold or presented for redemption or payment by such bank or trust company only in accordance with prior written authorization from the officer authorized to make the investment. All such transactions shall be confirmed in writing to the (*unit of government*) by the bank or trust company.

Any obligation held in the custody of a bank or trust company shall be held pursuant to a written custodial agreement as described in General Municipal Law Section 10(3)(a). The agreement shall provide that securities held by the bank or trust company, as agent of, and custodian for, the (*unit of government*), will be kept separate and apart from the general assets of the custodial bank or trust company and will not be commingled with or become part of the backing of any other deposit or other bank liability. The agreement shall also describe how the custodian shall confirm the receipt and release of the securities. Such agreement shall include all provisions necessary to secure the local government's perfected interest in the securities, and the agreement may also contain other provisions that the governing board deems necessary. The security and custodial agreements shall also include all other provisions necessary to provide the (*unit of government*) with a perfected interest in the securities.

The (*chief fiscal officer, treasurer, or other officers having custody of money*), where authorized, can direct the bank or trust company to register and hold the evidences of investments in the name of its nominee, or may deposit or authorize the bank or trust company to deposit, or arrange for the deposit of any such evidences of investments with a federal reserve bank or other book-entry transfer system operated by a federally regulated entity. The records of the bank or trust company shall show, at all times, the ownership of such evidences of investments, and they shall be, when held in the possession of the bank or trust company, at all times, kept separate from the assets of the bank or trust company. All evidences of investments delivered to a bank or trust company shall be held by the bank or trust company pursuant to a written custodial agreement as set forth in General Municipal Law Section 10(3)(a), and as described earlier in this section. When any such evidences of investments are so registered in the name of a nominee, the bank or trust company shall be absolutely liable for any loss occasioned by the acts of such nominee with respect to such evidences of investments.

Appendix B:

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XIII. COURIER SERVICE

The (*chief fiscal officer, or other officer authorized by law to make deposits*) may, subject to the approval of the governing board by resolution, enter into a contract with a courier service for the purpose of causing the deposit of public funds with a bank or trust company. The courier service shall be required to obtain a surety bond for the full amount entrusted to the courier, payable to the (*unit of government*) and executed by an insurance company authorized to do business in the State of New York, with a claims-paying ability that is rated in the highest rating category by at least two nationally recognized statistical rating organizations, to insure against any loss of public deposits entrusted to the courier service for deposit or failure to deposit the full amount entrusted to the courier service.

The (*unit of government*) may agree with the depository bank or trust company that the bank or trust company will reimburse all or part of, but not more than, the actual cost incurred by the (*unit of government*) in transporting items for deposit through a courier service. Any such reimbursement agreement shall apply only to a specified deposit transaction, and may be subject to such terms, conditions and limitations as the bank or trust company deems necessary to ensure sound banking practices, including, but not limited to, any terms, conditions or limitations that may be required by the Department of Financial Services or other federal or State authority.

XIV. ANNUAL REVIEW AND AMENDMENTS

The (*unit of government*) shall review this investment policy annually, and it shall have the power to amend this policy at any time.

XV. DEFINITIONS

The terms “public funds,” “public deposits,” “bank,” “trust company,” “eligible securities,” “eligible surety bond,” and “eligible letter of credit” shall have the same meanings as set forth in General Municipal Law Section 10.

Appendix B:

Model Investment Policy

Schedule A

Schedule of Eligible Securities for Collateralizing Deposits and Investments in Excess of FDIC Coverage (see Investment Policy, Section VIII)

[Note: This is not a list of Permitted Investments. Please see Investment Policy, Section X, for Permitted Investments. Moreover, this list is for purposes of illustration only. Governing boards, in the exercise of their prudent discretion, must determine which types of eligible securities, authorized by law, to list as permitted.]

“Eligible Securities” for Collateral	For purposes of determining aggregate “market value,” eligible securities shall be valued at these percentages of “market value”:
(i) Obligations issued, or fully insured or guaranteed as to the payment of principal and interest, by the United States of America, an agency thereof or a United States government-sponsored corporation.	100%
(ii) Obligations issued or fully guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank and the African Development Bank.	100%
(iii) Obligations partially insured or guaranteed by any agency of the United States of America, at a proportion of the market value of the obligation that represents the amount of the insurance or guaranty.	100%
(iv) Obligations issued or fully insured or guaranteed by the State of New York, obligations issued by a municipal corporation, school district or district corporation of this State or obligations of any public benefit corporation which under a specific State statute may be accepted as security for deposit of public moneys.	100%
(v) Obligations issued by states (other than the State of New York) of the United States rated in one of the three highest rating categories by at least one nationally recognized statistical rating organization.	100% if rated in the highest category; 90% for 2nd highest; 80% for 3rd highest.
(vi) Obligations of the Commonwealth of Puerto Rico rated in one of the three highest rating categories by at least one nationally recognized statistical rating organization.	100% if rated in the highest category; 90% for 2nd highest; 80% for 3rd highest.
(vii) Obligations of counties, cities and other governmental entities of another state having the power to levy taxes that are backed by the full faith and credit of such governmental entity and rated in one of the three highest rating categories by at least one nationally recognized statistical rating organization.	100% if rated in the highest category; 90% for 2nd highest; 80% for 3rd highest.
(viii) Obligations of domestic corporations rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization.	80%
(ix) Any mortgage-related securities, as defined in the Securities Exchange Act of 1934, as amended, which may be purchased by banks under the limitations established by federal bank regulatory agencies.	70%
(x) Commercial paper and bankers' acceptances issued by a bank (other than the bank with which the money is being deposited or invested) rated in the highest short-term category by at least one nationally recognized statistical rating organization and having maturities of not longer than 60 days from the date they are pledged.	80%
(xi) Zero-coupon obligations of the United States government marketed as “Treasury STRIPS.”	80%

Appendix C:

Repurchase Agreements

Repurchase Agreements (REPOs) are complex transactions that can expose the investing local government to serious risks. Investing officers must have the resources to negotiate these complex agreements with trading partners and custodial banks or trust companies and to monitor the investment daily. If a local government has a relatively small portfolio or limited staff resources, use of REPOs may not be appropriate. Investing officers should make sure that the legal counsel for the local government reviews all REPO documents.

Among other things, a REPO should comply with the following:

- Trading partners should be limited to creditworthy banks or trust companies located and authorized to do business in New York State or to registered primary dealers.
- Unless the obligations that are purchased pursuant to the REPO are registered or inscribed in the name of the local government, obligations must be purchased through, delivered to and held in the custody of a bank or trust company located and authorized to do business in New York State (the custodial bank or trust company should not be the seller of the obligations that are the subject of the REPO).
- The local government must enter into a master REPO, outlining basic responsibilities and liabilities of the buyer and seller and a written agreement with the custodial bank or trust company, outlining the basic responsibilities and liabilities of the buyer, seller and custodian.
- The custodial agreement should provide that the custodian takes possession and maintains custody of the obligations exclusively for the local government, that the obligations are free of any claims against the trading partner, and that any claims by the custodian are subordinate to the local government's claims or rights to those obligations.
- The obligations must be credited to the local government on the records of the custodial bank or trust company, and the transaction must be confirmed in writing to the local government by the custodial bank or trust company.
- The obligations purchased by the local government may only be sold or presented for redemption or payment by the local government's custodian upon written instructions of the investing officer of the local government.
- The local government must obtain a perfected security interest in the obligation.
- Agreements should be for short periods of time (no more than 30 days).
- The local government should determine whether to include margin requirements.
- No substitution of obligations is permitted.
- Payment for the purchased obligations should not be made by the custodial bank or trust company until the obligations are actually received (usually done simultaneously).

Obligations that are purchased pursuant to a REPO are deemed to be payable or redeemable, for purposes of the GML, on the date on which the purchased obligations are scheduled to be repurchased by the seller.³¹

Notes

- ¹ Section 11 of the General Municipal Law (GML) contains statutory provisions on the authority to invest and types of permitted investments. GML Section 39 requires governing boards to adopt investment policies.
- ² For this purpose, “bank” means a bank as defined by the State Banking Law or a national banking association, which is located and authorized to do business in New York. “Trust company” means a trust company as defined by the State Banking Law, which is located and authorized to do business in New York.
- ³ Local governments may invest in their own obligations with moneys from reserve funds established pursuant to GML Sections 6-c, 6-d, 6-e, 6-f, 6-g, 6-h, 6-j, 6-k, 6-l, 6-m or 6-n.
- ⁴ See GML Section 10(3)(a) and discussion of custodial agreements, *infra*.
- ⁵ For more information about procurement policies, please refer to our Local Government Management Guide entitled *Seeking Competition in Procurement*.
- ⁶ Local Finance Law Section 165.00 contains additional provisions regarding the deposit and investment of the proceeds of bonds and notes.
- ⁷ See 1987 Ops St Comp No. 87-14, at p. 25.
- ⁸ Savings banks, savings and loan associations, and credit unions do not fall within the definition of “bank” or “trust company” for purposes of GML Sections 10 and 11. However, Banking Law Section 96-d authorizes the designation of savings banks and savings and loan associations as depositaries under the “banking development district program.” The program is intended “to encourage the establishment of bank branches in geographic locations where there is demonstrated need for banking services.” This grant of authority under the Banking Law is scheduled to expire on January 1, 2017. Furthermore, GML Sections 10(2)(a)(ii) and 11(2)(a)(2) authorize participation in a deposit placement program in which the local government’s monies are redeposited in one or more “banking institutions” as defined in Banking Law Section 9-r (see *Deposit Placement Programs*, *infra*).
- ⁹ GML Section 10(3) contains statutory requirements for securing deposits not covered by FDIC. GML section 11 requires that investments in special time deposit accounts in, and certificates of deposit issued by, banks or trust companies be secured in the same manner as provided for in section 10 for securing deposits.
- ¹⁰ See 12 CFR 330.15(b)(1), defining “official custodian” as a person with “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.”
- ¹¹ GML Section 10(1)(f)
- ¹² Certain eligible securities are valued at 70 percent, 80 percent or 90 percent of their market value for purposes of determining the aggregate “market value.” See Schedule A in Appendix B for additional information on these percentages and the types of securities to which they apply.
- ¹³ GML Section 10

Notes

- ¹⁴ GML Section 10(2)(a)(ii). “Banking institution” is defined for this purpose as any bank, trust company, savings bank, savings and loan association, or branch of a foreign banking corporation the deposits of which are insured by the Federal Deposit Insurance Corporation, which is incorporated, chartered, organized or licensed under the laws of this state or any other state or the United States (Banking Law Section 9-r).
- ¹⁵ GML Sections 10(2)(a)(ii) and 11(2)(a)(ii). Also refer to the November 2012 **OSC Accounting Bulletin Deposit Placement Programs** for more information on these programs
- ¹⁶ GML Section 11(2)(a)(2) sets forth the specific conditions for investments.
- ¹⁷ GML Section 10(1)(h) defines “eligible letter of credit” as an irrevocable letter of credit issued in favor of the local government, for a term not to exceed 90 days, by certain qualifying banks (other than the bank with which the money is being deposited or invested). See Section 10 for additional requirements pertaining to eligible letters of credit or consult your legal counsel.
- ¹⁸ Certain categories of eligible securities qualify only if they meet certain rating criteria (see, e.g., GML Section 10[1][f][v],[vi],[vii],[viii],[x]).
- ¹⁹ Notwithstanding the repeal of certain mandatory language in GML Section 10 (Laws of 2005, Chapter 545): (1) security agreements should continue to contain provisions expressly requiring that, unless registered or inscribed in the name of the local government, pledged securities be delivered in a form suitable for transfer or with an assignment in blank to the local government or to the bank or trust company with which the local government has entered into a written custodial agreement; and (2) custodial agreements should continue to provide that the pledged securities not be commingled with or become part of the backing of any other deposit or other bank liability.
- ²⁰ A model Security-Custodial Agreement for use with collateral pools can be accessed on our website at **www.osc.ny.gov/files/local-government/required-reporting/pdf/model.pdf**.
- ²¹ See GML Section 11(2)(a)(2).
- ²² Banking Law Section 107-a also provides that if the local government and the bank have agreed in writing as to the maximum amount of security that the bank must provide and the terms, conditions, and timing of the provision of security pursuant to the agreement, and the bank has at all times complied with the agreement, the bank is deemed to have complied with the statute requiring security for so long as it complies with the agreement.
- ²³ GML Section 39 requires the adoption of an investment policy.
- ²⁴ For purposes of GML Section 39, the term “firm” is defined to include, but not be limited to, a bank or trust company as defined in Section 10 of the GML, the lead participant of a cooperative investment agreement as defined in GML article 3-A, and the seller of an obligation that is purchased pursuant to a repurchase agreement.
- ²⁵ See GML Section 43.

Notes

- ²⁶ “Retail” or fungible REPOs, where the purchaser shares the obligations that are subject to the REPO (e.g., the seller pledges an undivided share of a portfolio), are to be avoided.
- ²⁷ Specific REPOs that do not have a specific maturity date should not be made.
- ²⁸ See GML Section 11(3)(a)(1). REPOs, if used at all, should be limited to liquid, marketable U.S. securities. Long-term securities whose liquidity or market values are doubtful or volatile should be avoided.
- ²⁹ See GML Section 11(6). Any investment of commingled moneys must be payable or redeemable at the option of the local government within such time as the proceeds will be needed to meet expenditures for which the moneys were obtained or as otherwise specified in the GML. The separate identity of the sources of the commingled funds must at all times be maintained and income received must be credited on a pro rata basis to the funds or accounts from which the moneys were invested
- ³⁰ E.g., Town Law Section 25, County Law Section 403, Education Law Section 2122(4); see also Public Officers Law Section 11 concerning, among other things, “blanket undertakings.”
- ³¹ It is the view of the Office of the State Comptroller that leveraging of assets through the use of “reverse repurchase agreements” constitutes an unauthorized form of borrowing not permitted by the Local Finance Law.

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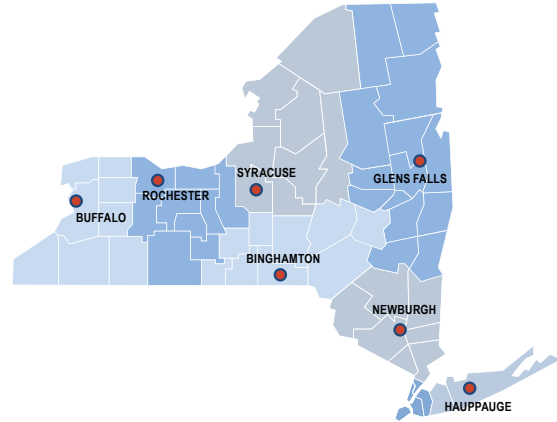
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