



San Jacinto River Authority

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OPINION COMMITTEE

Via E-Mail: Opinion.Committee@texasattorneygeneral.gov

Honorable Ken Paxton
Attorney General of Texas
Attention: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request for opinion on matters concerning public funds of local government bodies subject to the requirements of the Public Funds Investment Act, chapter 2256, Texas Government Code, and the Public Funds Collateral Act, chapter 2257, Texas Government Code

Dear General Paxton:

The San Jacinto River Authority (the "SJRA") is a conservation and reclamation district, a governmental agency, and a political subdivision of the State of Texas created in 1937 by special act of the Texas Legislature under the authority of Article XVI, Section 59, of the Texas Constitution.¹ The SJRA is one of ten major river authorities in the State of Texas. Its mission is to develop, conserve, and protect the water resources of the San Jacinto River basin.

The SJRA maintains significant deposits and investments of public funds in accordance with Texas law, including both the Public Funds Investment Act, chapter 2256, Texas Government Code (the "PFIA"), and the Public Funds Collateral Act, chapter 2257, Texas Government Code (the "PFCA"). As President of the Board of Directors of the SJRA, I respectfully request your opinion on several questions regarding the PFIA and PFCA. Specifically, my questions concern whether the PFIA and PFCA authorize the SJRA to invest public funds in certain time deposits.

¹ See TEX. REV. CIV. STAT. ANN. art. 8280-121 (Vernon 1954), amended by Act of May 25, 1967, 60th Leg., R.S., ch. 547, §§ 1-6, 1967 Tex. Gen. Laws 1212; Act of May 21, 1991, 72nd Leg., R.S., ch. 698, § 1, 1991 Tex. Gen. Laws 2503; Act of May 23, 2003, 78th Leg., R.S., ch. 847, § 1, 2003 Tex. Gen. Laws 2640; Act of May 31, 2015, 84th Leg., R.S., ch. 1148, § 16, 2015 Tex. Sess. Law. Serv. 3861 (West).

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PFIA Background Information

The PFIA applies to several types of governmental entities in Texas, including local governments. TEX. GOV'T CODE ANN. § 2256.003(a)(1) (West 2016). Under the PFIA, the term "local government" includes districts and authorities created under Article XVI, Section 59 of the Texas Constitution, such as the SJRA. *Id.* § 2256.002(7). The PFIA permits the SJRA to purchase, sell, and invest its funds, and any other funds it controls, in certain investments authorized under Subchapter A of the PFIA.² *Id.* § 2256.003(a).

The PFIA uses several provisions to describe which investments are considered "authorized investments." Section 2256.009(a) lists various authorized investments which are obligations of or are guaranteed by governmental entities, including:

(1) obligations, including letters of credit, of the United States or its agencies and instrumentalities;

...

(4) other obligations, the principal and interest of which are unconditionally guaranteed or insured by, or backed by the full faith and credit of, this state or the United States or their respective agencies and instrumentalities, including obligations that are fully guaranteed or insured by the Federal Deposit Insurance Corporation [the "FDIC"] or by the explicit full faith and credit of the United States.

Id. § 2256.009(a). Other provisions of the PFIA describe different types of authorized investments, including repurchase agreements, commercial paper, and mutual funds. *See, e.g., id.* §§ 2256.009, .010, .011, .013, .014. Of particular importance to this request, section 2256.010(a) states that a certificate of deposit or share certificate is an authorized investment under the PFIA if the certificate is issued by a depository institution that has its main office or a branch office in Texas and is:

(1) guaranteed or insured by the [FDIC] or its successor or the National Credit Union Share Insurance Fund or its successor;

(2) secured by obligations that are described by Section 2256.009(a) . . . ;

or

(3) secured in any other manner and amount provided by law for deposits of the investing entity.

² Such investments must be in compliance with the investment policy approved by the Board of Directors of the SJRA and made in accordance with the standard of care prescribed by section 2256.006 of the PFIA. TEX. GOV'T CODE ANN. § 2256.003(a) (West 2016). For each question in this request, it should be assumed that the subject investment is made in accordance with these and all other general requirements of the PFIA, including those regarding investment training, investment officers, and investment policies. *See, e.g., id.* §§ 2256.005, .007, .008.

Id. § 2256.010(a).

In Opinion No. GA-0834, the Attorney General's Office concluded that the PFIA permits a local government to place its funds in money market deposit accounts fully backed by the FDIC. *See* Tex. Att'y Gen. Op. No. GA-0834 (2011) at 2. In its analysis, the Attorney General's Office stated in the opinion that nothing in statutory or case law indicates that a demand account cannot properly be deemed an "other obligation" under section 2256.009. *Id.* at 1. The opinion further stated that the PFIA requires the principal and interest of such "other obligations" authorized under section 2256.009(a)(4) must be unconditionally guaranteed, insured by, or backed by the full faith and credit of the State of Texas or the United States or their respective agencies and instrumentalities. *Id.* at 2, citing TEX. GOV'T CODE ANN. § 2256.009(a)(4) (West 2008). This includes demand deposits insured by the Federal Deposit Insurance Corporation; provided, however, that such demand deposits are insured only to the maximum extent of federal law, which is presently \$250,000.³ *Id.* at 2, citing Act of July 21, 2010, Pub. L. No. 111-203, Section 335(a)(1), 124 Stat. 1376, 1540 (2010).

The Attorney General's Office closes Opinion No. GA-0834 by reminding the requestor that the requirements of Texas law governing the money market deposit at issue were not limited to those found in the PFIA, as the deposit at issue in the request is also subject to the requirements of the PFCA. *Id.* at 2.

PFCA Background

The PFCA governs deposits of public funds by public entities, including the state and political or governmental entities, agencies, instrumentalities, or subdivisions of the state, including districts created under Article XVI, Section 59, of the Texas Constitution, like the SJRA. TEX. GOV'T CODE ANN. §§ 2257.002(7)-(8), .021 (West 2016). A "deposit of public funds" means public funds of a public entity that (i) are not managed by the comptroller under chapter 404 of the Government Code, and (ii) are held as a demand or time deposit by a depository institution expressly authorized by law to accept a public entity's demand or time deposit. *Id.* § 2257.002(3).

Deposits of public funds must be secured by eligible security" as specifically described in the PFCA. *Id.* § 2257.021. The term "eligible security" includes, among other items, (i) *an investment security*, and (ii) *a letter of credit issued by a federal home loan bank*. *Id.* § 2257.002(4). The term "investment security" includes, among other items, *a security in which a public entity may invest under the PFIA*. *Id.* § 2257.002(5).

³ Section 2256.009(a)(4) was amended by H.B. 2226 in 2011, after the release of Opinion No. GA-0834, to add the words "including obligations that are fully guaranteed or insured by the [FDIC] or by the explicit full faith and credit of the United States." Act of May 30, 2011, 82nd Leg. R.S., ch. 1004, § 4, 2011 Tex. Gen. Laws 2545.

To meet the collateral requirements of the PFCA there must be a total value of eligible security to secure a deposit of public funds in an amount not less than the amount of the deposit of public funds plus the amount of any accrued interest, which is reduced to the extent that the United States or an instrumentality of the United States insures the deposit. *Id.* § 2257.022.

A public entity may contract with a bank that has its main office or a branch office in Texas to secure a deposit of public funds. *Id.* §2257.024(a). Such contract may contain terms or conditions relating to investment securities used as security for a deposit of public funds, including terms or conditions relating to the: (i) possession of the collateral; (ii) substitution or release of an investment security; (iii) ownership of the investment securities of the bank used to secure a deposit of public funds; and (iv) the method by which an investment security used to secure a deposit of public funds is valued. *Id.* § 2257.024(b).

Federal Regulation of the Banking Sector

The United States is represented on the Basel Committee on Banking Supervision,⁴ which Committee provides a “forum for regular cooperation between its member countries on banking supervisory matters.” See BASEL COMMITTEE ON BANKING SUPERVISION, *A brief history of the Basel Committee*, at 1, available at <http://www.bis.org/bcbs/history.pdf>. The first proposal of the Committee was approved by its governors in 1998, and has been dubbed “Basel I” or the “1988 Accord”. *Id.* at 2. Basel I primarily covered the minimum capital requirements for banks. *Id.* at 2-3. Basel I was superseded by new capital adequacy framework approved by the Committee’s governors in 1999, dubbed “Basel II.” *Id.* at 3. Basel II recommended risk and capital management requirements of banking institutions. *Id.* In the midst of the financial collapse of 2008, the Committee began developing additional proposals to build upon and strengthen the Basel II framework. “Basel III” was subsequently adopted by the Committee’s governors late 2010. *Id.* at 4. Basel III has evolved to cover three main areas for banking institutions:

1. Capital – Effective as of January 1, 2014, revised regulatory capital definitions and minimum capital ratios have been implemented, as well as changed risk weights for certain assets and off-balance sheet exposures.
2. Liquidity Coverage Ratio ("LCR") – Beginning in January, 2015, the LCR began its multi-year phase-in. LCR is designed to ensure that an adequate level of unencumbered, high-quality liquid assets are maintained to meet liquidity needs for a 30 day calendar time horizon. Such assets may not be pledged to secure collateralize, or enhance the credit of any transaction.
3. Net Stable Funding Ratio ("NSFR") – Beginning in 2018, the NSFR will restrict the ability of banks to fund liquid assets with short term funding maturing just

⁴ Originally established in 1974 as the Committee on Banking and Regulations and Supervisory Practices, and later renamed.

outside of the LCR's 30-day time horizon, in an effort to counterbalance the effects of the LCR.

Id. at 4-5.

While the recommendations of the Committee are non-binding upon its members, the U.S. Federal Reserve has implemented Basel I and II in the past and is taking steps to implement Basel III. *See* <http://www.federalreserve.gov/bankinforeg/basel/USImplementation.htm>. The Basel III requirements, as implemented by the U.S. Federal Reserve, are making it more difficult for banking institutions in Texas to post collateral for public entities as required by the PFCA. As a consequence, fewer Texas banks are accepting or seeking deposits from public entities.

Time Deposits

All but one of the questions submitted below deal with time deposit accounts. Neither the PFIA nor the PFCA define the terms "time deposit" or "time deposit accounts. *But see* TEX. GOV'T CODE ANN. §§ 2257.002(3)(B) (West 2016) (referencing a "demand or time deposit" in the definition of the term "deposit of public funds"). Other Texas statutes provide definitions for the term "time deposit." Section 105.001(5) of the Local Government Code, dealing with depositories for municipal funds, states that a "time deposit" is a "deposit of funds subject to a contract between the depositor and the depository under which the depositor may not withdraw any of the funds by check or by another manner until the expiration of a certain period following written notice of the depositor's intent to withdraw the funds." TEX. LOCAL GOV'T CODE ANN. §§ 105.001(5) (West 2008 & Supp. 2015). Similarly, Government Code section 404.001(7), dealing with State Treasury operations, states that a "time deposit" is a "deposit for which there is in force a contract providing that neither the whole nor a part of the deposit may be withdrawn by check or otherwise before the expiration of the period of notice that must be given in writing in advance of a withdrawal." TEX. GOV'T CODE ANN. §§ 404.001(7) (West 2013 & Supp. 2015).

While the above Texas statutory definitions may be useful in interpreting the term "time deposit" for purposes of the PFIA, a more expansive definition of the term can be found in the Reserve Requirements of Depository Institutions, known as "Regulation D" and codified in Title 12, Chapter II, Subchapter A, Part 204 of the Code of Federal Regulations. *See also* Regulation D Reserve Requirements Consumer Compliance Handbook, *available* at https://www.federalreserve.gov/boarddocs/supmanual/cch/int_depos.pdf. Regulation D imposes reserve requirements on certain deposits and other liabilities of depository institutions for the purpose of implementing monetary policy. *Id.* at 1. It is relevant here since all depository institutions, including commercial banks, savings banks, savings and loan associations, credit unions, and agencies and branches of foreign banks located in the United States, are subject to these reserve requirements specifying how different types of deposit accounts must be classified. *Id.*

Regulation D states that a time deposit may have a maturity of seven days or more and may be payable on a specified date, after the expiration of a specified period of time, or upon

receipt of written notice from the depositor. *Id.* at 2. A time deposit account may be interest-bearing and may be evidenced by a negotiable or non-negotiable, transferable or nontransferable certificate, instrument, passbook, book entry, or other similar instrument. *Id.* The presence of an early withdrawal penalty as part of the institution's deposit agreement differentiates time deposit accounts from other types of accounts. *Id.* The most common form of time deposit account is the certificate of deposit

Under Texas law, funds placed with a bank, including time deposits, become general deposits owned by the bank and create a legal obligation whereby the bank accepting the deposit is the debtor and the individual or entity making the deposit is the creditor. *See Tex. Bank & Trust Co. v. Spur Sec. Bank*, 705 S.W.2d 349, 352 (Tex. App.—Amarillo 1986, no writ); *Stone Fort Natl. Bank of Nacogdoches v. Forbess*, 126 Tex. 568, 91 S.W.2d 674, 676 (1936). In the case of time deposits, some form of agreement between the depositor and bank is executed forming this contract to create the debtor-creditor relationship between the bank and the depositor. *See Tex. Bank & Trust Co.* at 352-353 (citing *Mesquite State Bank v. Professional Investment Corp.*, 488 S.W.2d 73 (Tex. 1972)). Such agreement determines the manner in which the funds of the depositor may be withdrawn and is subject to the law of contracts. *Frost National Bank v. Nicholas and Barrera*, 534 S.W.2d 927 (Tex. Civ. App.—Tyler 1976, writ ref'd n.r.e.).

For purposes of the questions presented below, it should be assumed that a “time deposit” meets the requirements of Regulation D, and that the bank and the SJRA (as depositor) have entered into a valid and binding agreement relative to the terms and conditions of the deposit.

Questions Presented

Question 1 – Would the SJRA be fully in compliance with the requirements of the PFIA if it deposited \$200,000 of its funds in a time deposit account fully insured by the FDIC?

I believe such a deposit is permitted by the PFIA under either section 2256.010 or section 2256.009(a)(4), Texas Government Code.

Section 2256.010 states clearly that a certificate of deposit or share certificate is an "authorized investment" under the PFIA if it is issued by a depository institution that has its main office or a branch office in Texas and is guaranteed by the FDIC. TEX. GOV'T CODE ANN. § 2256.010(a)(1) (West 2016). Therefore, if this \$200,000 time deposit was made in the form of a \$200,000 certificate of deposit or share certificate insured by the FDIC, it would be a permissible "investment" for the SJRA under the PFIA.

Although section 2256.010 is limited in scope to "certificates of deposit and share certificates," it appears that other forms of time deposits that are insured by the FDIC would be permitted under section 2256.009(a)(4) as examples of "other obligations, the principal and interest of which are . . . insured by . . . the United States or [its] . . . agencies and instrumentalities, including obligations that are fully guaranteed or insured by the [FDIC] . . ."

Id. § 2256.009(a)(4); *see also* Tex. Att'y Gen. Op. No. GA-0834 (2011) at 2 (concluding that a demand deposit may be considered an "other obligation" for purposes of the PFIA).

Question 2 - Would the SJRA be fully in compliance with the requirements of the PFIA and the PFCA if it placed \$10,000,000 of its funds in a certificate of deposit issued by a depository institution that has its main office or a branch office in Texas and is backed by a federal home loan bank letter of credit securing the full deposit amount and any accrued interest?

I believe this transaction would meet all applicable requirements of the PFIA and PFCA.

As discussed above, section 2256.010 of the PFIA makes clear that certain certificates of deposit are authorized investments under the PFIA. Of particular relevance here, a certificate of deposit issued by a depository institution that has its main office or a branch office in Texas is an authorized investment under the PFIA if the certificate is secured by an obligation described by section 2256.009(a). TEX. GOV'T CODE ANN. § 2256.010(a)(2) (West 2016). Section 2256.009(a)(1) provides that "obligations, including letters of credit, of the United States or its agencies and instrumentalities," are authorized investments under the PFIA. *Id.* § 2256.009(a)(1).

Agencies and instrumentalities are not defined in the PFIA or in other Texas statutes. Black's Law Dictionary defines an "agency" as a governmental body with the authority to implement and administer particular legislation. BLACK'S LAW DICTIONARY (8th ed. 2004). It defines a "federal agency" as a department or other instrumentality of the executive branch of the federal government, including a government corporation and the Government Printing Office and an instrumentality as a means or agency through which a function of another entity is accomplished, such as a branch of a governing body. BLACK'S LAW DICTIONARY (8th ed. 2004).

Texas courts have discussed agencies and instrumentalities in another context: the immunity of the United States from taxation by the states. This immunity has been held to extend to the "agenc[ies] or instrumentalit[ies] so closely connected to the Government that the two cannot realistically be viewed as separate entities, at least insofar as the activity being taxed is concerned." *AETC II Privatized Housing, LLC v. Tom Green Cnty. Appraisal Dist.*, 2015 Tex. App. LEXIS 6357 at 8 (quoting *United States v. New Mexico*, 455 U.S. 720, 733 (1982)). In discussing this immunity, the United States Supreme Court has described the nature of a federal instrumentality as "virtually . . . an arm of the Government," "integral parts of [a governmental department]," and "arms of the Government deemed by it essential for the performance of governmental functions." *United States v. New Mexico*, 455 U.S. at 737.

The federal home loan bank system was set up by the Federal Home Loan Bank Act of 1932 as a government enterprise to support mortgage lending and other community investments. *See* Act of July 16, 1932, Pub. L. No. 72-304, 47 Stat. 725 (1932) (now codified, as amended, at 12 U.S.C. § 1421 *et seq.*); *see also* FEDERAL HOUSING FINANCE AGENCY, *The Federal Home Loan Bank System*, available at <http://www.fhfa.gov/SupervisionRegulation/FederalHomeLoanBanks/Pages/About-FHL-Banks.aspx>. It is composed of eleven regional federal

home loan banks, more than 7,300 member financial institutions, and an Office of Finance, as the federal home loan bank system's office of finance. *Id.* Each federal home loan bank is a separate, government-chartered, member-owned corporation. *Id.* As a government-chartered corporation through which governmental functions are carried out, it appears that each federal home loan bank would constitute an "agency" or "instrumentality" of the United States such that federal home loan bank letters of credit fall within that language of section 2256.009(a)(1) of the PFIA. Therefore, I believe a \$10,000,000 certificate of deposit issued by a depository institution that has its main office or a branch office in Texas, is backed by a federal home loan bank letter of credit securing the full deposit amount and any accrued interest, is an authorized investment under the PFIA.

In order to comply with the PFCA, the deposit would have to meet the collateral requirements of Section 2257.022. Specifically, there must be a total value of eligible security to secure a deposit of public funds in an amount not less than the amount of the deposit of public funds plus the amount of any accrued interest, and reduced to the extent that the United States or an instrumentality of the United States insures the deposit. TEX. GOV'T CODE ANN. § 2257.022 (West 2016). Section 2257.002(4)(F) explicitly includes "letters of credit issued by a federal home loan bank" as eligible security. *Id.* § 2257.002(4)(F). Therefore, since this question assumes the federal home loan bank letter of credit backing the certificate of deposit is sufficient to secure the entire amount of the deposit of public funds as well as any accrued interest, I believe that this deposit would be fully in compliance with the PFCA without the SJRA taking any other steps to secure the certificate of deposit with additional collateral.

Question 3 – Would the SJRA be fully in compliance with the requirements of the PFIA and the PFCA if it placed \$10,000,000 of its funds in a certificate of deposit issued by a depository institution that has its main office or a branch office in Texas and is backed by a letter of credit from an agency or instrumentality of the United States, other than a federal home loan bank, in an amount securing the full deposit and any accrued interest?

I believe such a deposit would meet all applicable requirements of the PFIA and PFCA.

An analysis of this deposit would again lead to Section 2256.010 of the PFIA and its designation of certain certificates of deposit as authorized investments under the PFIA. A certificate of deposit issued by a depository institution that has its main office or a branch office in Texas is considered an authorized investment under the PFIA if it is secured by an obligation described by Section 2256.009(a). *Id.* § 2256.010(a)(2). Of particular importance here, section 2256.009(a)(1) provides that "obligations, including letters of credit, of the United States or its agencies and instrumentalities," are authorized investments under the PFIA. *Id.* § 2256.009(a)(1). The deposit at issue in this question would be backed by a letter of credit from an agency or instrumentality of the United States other than a federal home loan bank. As such, I believe this deposit would be permissible under the PFIA.

In order to comply with the PFCA, the deposit would have to meet the collateral requirements of Section 2257.022. Specifically, there must be a total value of eligible security to secure a deposit of public funds in an amount not less than the amount of the deposit of public funds plus the amount of any accrued interest, and reduced to the extent that the United States or an instrumentality of the United States insures the deposit. *Id.* § 2257.022. Eligible securities under the PFCA include investment securities. *Id.* §2257.002(4)(F). The definition of investment securities in the PFCA includes securities in which public entities may invest under the PFIA, such as a letter of credit of an agency or instrumentality of the United States. *Id.* §§ 2257.002(5)(C), 2256.009(a)(1). Therefore, since this questions assumes the deposit is backed by a letter of credit from an agency or instrumentality of the United States, other than a federal home loan bank, in an amount securing the full deposit and any accrued interest, I believe that this deposit would be fully in compliance with the PFCA without the SJRA taking any other steps to secure the deposit with additional collateral.

Question 4 – Would the SJRA be fully in compliance with the requirements of the PFIA and PFCA if it placed \$10,000,000 of its funds in a certificate of deposit issued by a depository institution that does not have a main or branch office in Texas and is backed by a letter of credit from an agency or instrumentality of the United States in an amount securing the full deposit amount and any accrued interest?

I believe such a certificate of deposit is permitted by the PFIA and the PFCA.

Section 2256.010 of the PFIA, expressly permitting certain certificates of deposit, would not be applicable here because it only addresses certificates of deposit issued by depository institutions that have a main office or branch office in Texas. *See id.* § 2256.010. Nevertheless, it appears that this certificate of deposit may constitute an authorized investment under section 2256.009(a)(4) of the PFIA, as but one example of “other obligation,” the principal and interest of which are unconditionally guaranteed or insured by an agency or instrumentality of the United States. *Id.* § 2256.009(a)(4) (again, the deposit at issue in this question would be backed by a letter of credit from an agency or instrumentality of the United States other than a federal home loan bank). As such, I believe this deposit would be permissible under the PFIA.

In order to comply with the PFCA, the deposit would have to meet the collateral requirements of Section 2257.022. Specifically, there must be a total value of eligible security to secure a deposit of public funds in an amount not less than the amount of the deposit of public funds plus the amount of any accrued interest, and reduced to the extent that the United States or an instrumentality of the United States insures the deposit. *Id.* § 2257.022. Eligible securities under the PFCA include investment securities. *Id.* §2257.002(4)(F). The definition of investment securities in the PFCA includes securities in which public entities may invest under the PFIA, such as a letter of credit of an agency or instrumentality of the United States. *Id.* §§ 2257.002(5)(C), 2256.009(a)(1). Therefore, since this questions assumes the deposit is backed by a letter of credit from an agency or instrumentality of the United States in an amount securing the full deposit and any accrued interest, I believe that this deposit would be fully in compliance

with the PFCA without the SJRA taking any other steps to secure the deposit with additional collateral.

Question 5 – Would the SJRA be fully in compliance with the PFIA and PFCA if it made a \$500,000 money market deposit backed by another obligation listed in Section 2256.009(a), such as a federal home loan bank letter of credit, to the extent the amount of the deposit and any accrued interest exceed the maximum amount of FDIC insurance?

I believe such a money market deposit would be permitted under both the PFIA and PFCA.

In Opinion No. GA-0834, the Attorney General's Office explained that a local government is permitted to place its funds in money market deposit accounts fully backed by the FDIC under the PFIA. Tex. Att'y Gen. Op. No. GA-0834 (2011) at 2. The deposit in question in Opinion No. GA-0834 was fully insured by the FDIC and the opinion explained that the deposit was permissible up to the maximum amount of FDIC insurance, currently \$250,000. *Id.* at 2. However, the issue remains as to whether a demand deposit over the amount of deposit insurance coverage provided by the FDIC would be permissible under the PFIA if it were backed by another authorized entity or obligation of such entity.

I believe the deposit at issue in this question would be authorized under the PFIA if the entire amount of the deposit or accrued interest in excess of the \$250,000 insured by the FDIC was backed by an obligation listed in Section 2256.009, such as a letter of credit of an agency or instrumentality of the United States (including, but not limited to, a federal home loan bank letter of credit). This is because demand deposits are "other obligations" as discussed in Opinion No. GA-0834, and the language of section 2256.009(a)(4) permits such obligations under the PFIA so long as they are backed by an agency or instrumentality of the United States, a group that is not limited to just the FDIC. TEX. GOV'T CODE ANN. §2256.009(a)(4) (West 2016); *see also* n. 3, *supra* (Section 2256.009(a)(4) was amended in 2011 to make specific reference to the FDIC in addition to other agencies and instrumentalities of the United States).

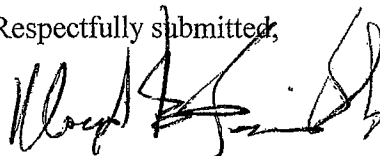
In order to comply with the PFCA, the deposit would have to meet the collateral requirements of Section 2257.022. Specifically, there must be a total value of eligible security to secure a deposit of public funds in an amount not less than the amount of the deposit of public funds plus the amount of any accrued interest, and reduced to the extent that the United States or an instrumentality of the United States insures the deposit. *Id.* § 2257.022. Eligible securities under the PFCA include investment securities. *Id.* §2257.002(4)(F). The definition of investment securities in the PFCA includes securities in which public entities may invest under the PFIA, such as a letter of credit of an agency or instrumentality of the United States. *Id.* §§ 2257.002(5)(C), 2256.009(a)(1). Therefore, since this questions assumes the deposit is backed by a letter of credit from an agency or instrumentality of the United States in an amount securing the full deposit and any accrued interest, I believe that this deposit would be fully in compliance

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with the PFCA without the SJRA taking any other steps to secure the deposit with additional collateral.

I seek your opinion on all five of these questions. Thank you for your time and attention to these important issues concerning public funds.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lloyd B. Tisdale", written in a cursive style.

Lloyd B. Tisdale
President, Board of Directors
San Jacinto River Authority

419544.5