

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1344

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1344

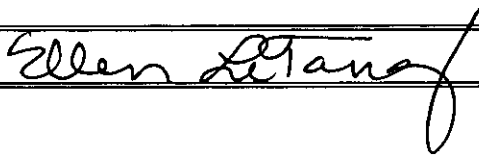
## House Industry, Business and Labor Committee

☐ Check here for Conference Committee

**Hearing Date:** January 21, 2009

**Recorder Job Number:** 7376

Committee Clerk Signature



**Chairman Keiser:** Opened the hearing on HB relating to the security for public deposits.

Marilyn Foss~General Counsel for the North Dakota bankers Association. See testimony attachment.

Representative Vigesaa: What does CEDAR stand for?

Foss: Certificate of Deposit Account Registers services.

Representative Vigesaa: How long has that been in existence?

Foss: At least four to five years.

Representative Ruby: You have FDIC insured funds and banks can pay for a guarantee or above. As long as the funds are covered by either one of these, they don't need to basically secured or bonded separately. Is this what the bill is doing?

Foss: Yes, that is what half of the bill is doing and the other half addresses these registry services and how they work.

Representative Vigesaa: Is there a fee for banks to be involved in this service?

Foss: Yes, they can make fees and pay fees.

Chairman Keiser: This bill applies to state chartered bank and financial institutions, what about federally chartered, are they covered?

Foss: No.

Chairman Keiser: Is there a minimum amount of time that the money has to be in the CEDAR's program before withdrawal?

Foss: With so many banks participating, the public depositor can negotiate with the bank about the terms and interest rate and what they do is in the matching process, they find another bank that will match those funds.

Chairman Keiser: So, those funds are set?

Jack McDonald~Independent Banks of North Dakota. We also support HB 1344 wholeheartedly.

Bob Entringer~North Dakota Department of Financial Institutions. This would provide an excellent avenue to our banks.

Anyone here to testify in opposition, neutral?

What are the wished of the committee?

Representative Nottestad: Move the amendment.

Representative N Johnson: Seconded.

All ayes.

Representative Clark: Move a Do Pass as Amended.

Representative Boe: Second.

Roll Call was taken with a Do Pass as Amended on HB 1344 with 13 aye's, 0 nay's, 0 absent and Representative Vigesaa is the carrier.

## PROPOSED AMENDMENTS TO HOUSE BILL 1344

Page 1, line 1, replace "section" with "sections"

Page 1, line 1, after "21-04-09" insert "and "21-06-07"

Page 1, line 1, remove "security for"

Page 3, line 4, after "administration" insert "as determined by the commissioner of financial institutions"


Page 3, after line 7 insert:

**"SECTION 2. AMENDMENT.** Section 21-06-07 of the North Dakota Century

Code is amended and reenacted as follows:

**21-06-07. Political subdivisions may invest funds.**



1. Counties, cities, school districts, park districts, and townships in this state may invest moneys in their general fund, or balances in any special or temporary fund, in:
  - a. Bonds, treasury bills and notes, or other securities that are a direct obligation of, or an obligation insured or guaranteed by, the treasury of the United States, or its agencies, instrumentalities, or organizations created by an act of Congress.
  - b. Securities sold under agreements to repurchase written by a financial institution in which the underlying securities for the agreement to repurchase are of a type listed above.
  - c. Certificates of deposit fully insured by the federal deposit insurance corporation or by the state.
  - d. Obligations of the state.



e. Certificates of deposit fully insured or guaranteed by the federal deposit insurance corporation and placed for the benefit of the public depositor by a public depository through an appropriate reciprocal deposit placement service as determined by the commissioner of financial institutions.

2. Bonds, treasury bills and notes, or other securities so purchased must be taken into consideration in making levies for the ensuing year, and when funds are needed for current expenses, the governing board and authorities of such municipalities may convert those obligations into cash."

Renumber accordingly.



January 21, 2009

VR  
1/21/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1344

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  - a. Bonds, treasury bills and notes, or other securities that are a direct obligation of, or an obligation insured or guaranteed by, the treasury of the United States, or its agencies, instrumentalities, or organizations created by an act of Congress.
  - b. Securities sold under agreements to repurchase written by a financial institution in which the underlying securities for the agreement to repurchase are of a type listed above.
  - c. Certificates of deposit fully insured by the federal deposit insurance corporation or by the state.
  - d. Obligations of the state.
  - e. Certificates of deposit fully insured or guaranteed by the federal deposit insurance corporation and placed for the benefit of the public depositor by a public depository through an appropriate reciprocal deposit placement service as determined by the commissioner of financial institutions.
2. Bonds, treasury bills and notes, or other securities so purchased must be taken into consideration in making levies for the ensuing year, and when funds are needed for current expenses, the governing board and authorities of such municipalities may convert those obligations into cash."

Renumber accordingly

Date: Jan 21 - 2009  
Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1344

House House, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ As Amended

Motion Made By Clark Seconded By Boe

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	x		Representative Amerman	x	
Vice Chairman	x		Representative Boe	x	
Representative Clark	x		Representative Gruchalla	x	
Representative N Johnson	x		Representative Schneider	x	
Representative Nottestad	x		Representative Thorpe	x	
Representative Ruby	x				
Representative Sukut	x				
Representative Vigesaa	x				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Vigesaa

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1344: Industry, Business and Labor Committee (Rep. Kelser, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1344 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "section" with "sections", after "21-04-09" insert "and 21-06-07 of the North Dakota Century Code", and remove "security for"

Page 3, line 4, after "administration" insert "as determined by the commissioner of financial institutions"

Page 3, after line 7, insert:

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  - a. Bonds, treasury bills and notes, or other securities that are a direct obligation of, or an obligation insured or guaranteed by, the treasury of the United States, or its agencies, instrumentalities, or organizations created by an act of Congress.
  - b. Securities sold under agreements to repurchase written by a financial institution in which the underlying securities for the agreement to repurchase are of a type listed above.
  - c. Certificates of deposit fully insured by the federal deposit insurance corporation or by the state.
  - d. Obligations of the state.
  - e. Certificates of deposit fully insured or guaranteed by the federal deposit insurance corporation and placed for the benefit of the public depositor by a public depository through an appropriate reciprocal deposit placement service as determined by the commissioner of financial institutions.
2. Bonds, treasury bills and notes, or other securities so purchased must be taken into consideration in making levies for the ensuing year, and when funds are needed for current expenses, the governing board and authorities of such municipalities may convert those obligations into cash."

Renumber accordingly



2009 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1344

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1344

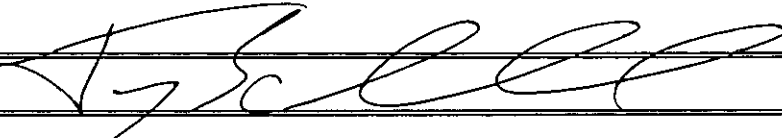
Senate Industry, Business, and Labor Committee

☐ Check here for Conference Committee

Hearing Date: March 18, 2009

Recorder Job Number: 11169

Committee Clerk Signature



Minutes:

*Troy Schuchard*

**Chairman Klein:** Opened the hearing on HB 1344, all members present.

**Marilyn Foss:** General Counsel for the North Dakota Bankers Association (NDBA) introduced and testified in support of HB 1344. (See attachment #1)

**Senator Andrist:** I am missing the connection between non-interest bearing accounts & certificate of deposit.

**Marilyn Foss:** Changing the language from the FDIC programs to the guarantee programs and buys money from the FDIC.

**Senator Andrist:** Are you talking about checking accounts?

**Marilyn Foss:** No, non-interest bearing accounts.

**Senator Horne:** This program sounds like a big program, is it a private company?

**Marilyn Foss:** Yes this is a private company, they are former FDIC members.

**Senator Horne:** There is only one of these?

**Marilyn Foss:** Yes & it is and it is trademarked. They make their money on fees.

**Rick Clayberg:** Testified in support of HB 1344. Premonitory is the only one running the Cedar Program. What the program allows them to do is to spread the risk with other institutions. The banks have been doing this with private people. It is not just for public deposit.

**Senator Horne:** Have they done this in other ways?

**Rick Clayberg:** It is somewhat similar but we are talking about deposits. What this does is allows that institution to hold the money but insure that risk throughout the state.

**Senator Andrist:** Financial institutions covering the needs with securities?

**Rick Clayberg:** An institution would have to pledge assets which would cover that CD within the bank. Private individuals can buy access to deposit insurance using the Cedar Program, which is the most cost effective.

**Senator Andrist:** Are you finding that banks want to participate?

**Rick Clayberg:** We are trying to provide the environment to support this.

**Senator Potter:** Would you have any objections to us adding NUCA?

**Rick Clayberg:** The language has been written but it is specifically for FDIC.

**Jack McDonald:** Representing the Independent Banks of North Dakota testified in support of HB 1344. This does the same thing with deposits and allows people to use local banks.

**Tim Karsky:** Testified in support of HB 1344. It depends on the time of year whether the Cedar Program is good to use or not.

**Chairman Klein:** And this bill deals specifically with the FDIC?

**Tim Karsky:** The first part of the bill covers NUCA. The second part of the bill addresses the FDIC. We haven't looked at NUCA.

**Chairman Klein:** Closed the hearing on HB 1344.

**Senator Nodland:** Motion for a Do Pass on HB 1344

**Senator Andrist:** Seconded

**Chairman Klein:** Motion for a Do Pass is approved 7-0, **Senator Nodland** to carry.

Date: 3/18/09  
Roll Call Vote #: 1

## Senate

## Industry, Business and Labor

Legislative Council Amendment Number

☒ **Pass**☐ Do Not Pass☐ Amended

Motion Made By Senator Nodland      Seconded By Senator Andrist

[illegible]

Total (Yes) 7 No 0

Absent 

Floor Assignment Senator Wodland

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
March 18, 2009 1:14 p.m.

**Module No: SR-49-5227**  
**Carrier: Nodland**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1344, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1344 was placed on the Fourteenth order on the calendar.**

2009 TESTIMONY

HB 1344

## TESTIMONY OF MARILYN FOSS

### SUPPORTING HOUSE BILL 1344

Chairman Keiser, members of the IBL Committee, I am Marilyn Foss, general counsel for the North Dakota Bankers Association ("NDBA"). I am here this morning to urge you to support House Bill 1344, which was introduced at the request of NDBA.

#### ***FDIC Insurance and FDIC Guarantees***

Under the current law, a bank is required to post a depository bond or pledge securities to secure repayment of a public deposit above the amount that is insured by the Federal Deposit Insurance Corporation – currently \$250,000. In December 2008 the Federal Deposit Insurance Corporation implemented a program to allow banks to purchase 100%, unlimited FDIC guarantee coverage for money that is held in a non interest bearing transaction account and exceeds the FDIC insured limit of \$250,000. To participate in this program, banks must pay a fee to FDIC. This new program gives banks another way to protect large public deposits, but it is through an FDIC guarantee of those deposits, rather than through FDIC insurance of the deposits. Whether public deposits are protected through FDIC insurance or an FDIC guarantee they are protected.

All of this having been said, N.D.C.C. section 21-04-09 explicitly defers the securities pledge requirement only for FDIC insured deposits. There are some who see the distinction between FDIC insurance and and FDIC guarantee as being without a difference, but we believe the better approach is to make the statute clear and explicit as to FDIC guarantees as well as FDIC insurance. House Bill 1344 does this. ( As an aside, I would note that the bill also covers a guarantee by the National Credit Union Administration. At this point in time, I think NCUA limits its offerings to share insurance. However I understand an NCUA guarantee that is functionally equivalent to the FDIC guarantee is in the development stage with the expectation that it will be implemented later this year.)

I do want to note that banks are not required to participate in the guarantee program. However, those that are not are required to give notice of that fact to customers. In North Dakota, all but 12 banks have bought the new guarantee coverage. The banks electing not to participate in the guarantee programs have FDIC insurance coverage for their deposits up to \$250,000 per account. They simply did not feel the benefits of a guarantee warranted the cost of participation in the program. It's not a safety and soundness issue.

***Reciprocal Deposit Placement Services for FDIC Insured Deposits***

This bill also makes it clearer that FDIC insured certificates of deposit that are obtained through a reciprocal deposit placement service are a permissible product for the investment of public funds and that there is not requirement for a depository bank to post a bond or pledge securities for those insured certificates of deposit. We are asking for the statutes to be made clearer on this point so that public officials can look at the statutes themselves and see that insured CDs that are obtained through the service are expressly included in the lists of permissible investments, rather than having to obtain interpretations from the attorney general, states attorneys, or city attorneys. (The interpretations have been obtained, but I told for some counties, the officials want to see it stated more clearly in the applicable Code sections.)

There is only one reciprocal depository placement service currently operating, the CDARS program which is operated by the Promontory Interfinancial Network, LLC. As I understand it, the CDARS business model is protected from "infringement" under federal laws to protect intellectual property. CDARS is the only program that fits the description in the bill, but it doesn't seem to be appropriate to name a specific program in legislation. Nonetheless, going forward in my testimony, I am talking about the reciprocal deposit service that is available to banks that participate in the CDARS network. To date, 12 North Dakota state and national banks are members of the network. Participation in the CDARS network allows banks to protect their depositors' large deposits with up to \$50 million in FDIC insurance coverage. Here's how it works:



When a large deposit is placed, with a network bank, that bank uses CDARS to place the funds into certificates of deposit issued by banks in the network. This occurs in increments of less than the standard FDIC insurance maximum, currently \$250,000 per account, to ensure that both principal and interest are eligible for full FDIC insurance. Other network banks do the same thing with their customers' deposits. With the help of a sophisticated matching system, network banks exchange deposited funds. This exchange occurs on a dollar-for-dollar basis, so that the equivalent of the original deposit comes back to the North Dakota depository bank for use in its local operations. The amount of public funds that are invested through the CDARS network effectively remain available for use by the bank for local lending that is so critical to the economic livelihood of North Dakota communities. In all cases, the full amount of the original deposit receives complete FDIC insurance protection.

I have personally verified with Promontory that there has been no issue with the payment of CDARS that are issued by banks that have failed. I would also note that the CDARS program is now so accepted as a safe and sound program that the FDIC has asked for comments so that it may revise its brokered deposit rules to exempt deposits that are obtained by a bank as a result of the bank's participation in the CDARS program. FDIC is undertaking this project because reciprocal deposits behave like core deposits. They are stable and appropriately may be used for local lending, an activity the FDIC encourages as we do. Also, as I understand it, the department of financial institutions does review CDARS deposits to verify the FDIC insurance coverage.

From the perspective of a public depositor, an FDIC insured CDARS CD is no different than a CD that is issued directly from a local North Dakota bank. The program allows public depositors to keep funds flowing and revolving in the community to a much greater extent that would be easily achievable without the CDARS program and allows banks to do the same thing. This bill is about options. Throughout the United States,

public officials are finding that CDARS is a great and safe option for public deposits. I have attached a map which shows the states in which the CDARS CDs are authorized investment vehicles for public fund. (North Dakota is included because of the statutory interpretations of the attorney general's office.)

We hope this bill will encourage more North Dakota counties and cities to see consider what CDARS can do for them. But nothing in the bill actually requires any political subdivision to use the service.

I have distributed proposed amendments to the bill. They do two things: 1) they amend section 21-06-07, the general section designating permissible investments for public deposits so that it corresponds directly with section 21-04-09 which addresses security for public deposits in approved deposit product; and 2) they provide for the commissioner of financial institutions to determine which specific reciprocal deposit placement services are appropriate for public fund deposits. The commissioner has told me he doesn't object to this responsibility as he and his examiners are familiar with the CDARS service and would be familiar with any other appropriate placement service as well. This reflection of state oversight should give additional assurance to public officials and additional protection for public funds.

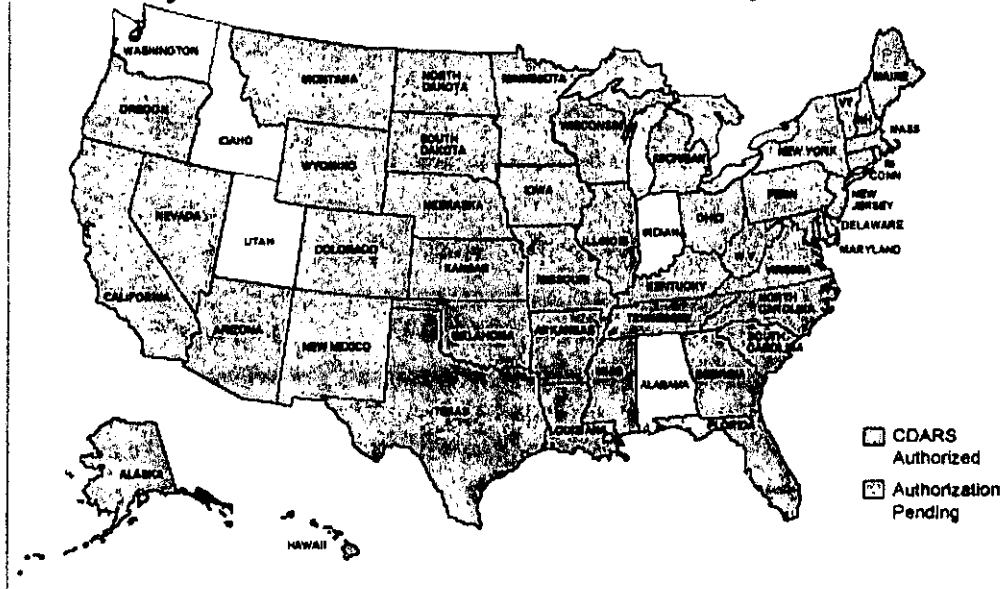
We urge the Committee to give House Bill 1344 a DO PASS.

[How CDARS Works](#) | [Why CDARS](#) | [Where to Find CDARS](#) | [In the News](#) | [Home](#)

#### Why CDARS

- Advisors
- Associations
- Businesses
- Credit Unions
- Individuals
- Non-profits
- Public Funds  
Authorized  
States
- Socially-  
motivated  
Investors

#### Availability of CDARS for Public Fund Investors by State



## TESTIMONY OF MARILYN FOSS

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***FDIC Insurance and FDIC Guarantees***

Under the current law, a bank is required to post a depository bond or pledge securities to secure repayment of a public deposit above the amount that is insured by the Federal Deposit Insurance Corporation – currently \$250,000. In December 2008 the Federal Deposit Insurance Corporation implemented a program to allow banks to purchase 100%, unlimited FDIC guarantee coverage for money that is held in a non interest bearing transaction account which exceeds the FDIC insured limit of \$250,000. To participate in this program, banks must pay a fee to FDIC. This new program gives banks another way to protect large public deposits, but it is through an FDIC guarantee of those deposits, rather than through FDIC insurance of the deposits. Whether public deposits are protected through FDIC insurance or an FDIC guarantee their payment is protected.

All of this having been said, N.D.C.C. section 21-04-09 explicitly defers the securities pledge requirement only for FDIC insured deposits. While there are some who see FDIC insurance and and FDIC guarantee as being "a distinction without a difference", NDBA believes the better approach is to make North Dakota's public funds deposit law clear and explicit as to FDIC guarantees as well as FDIC insurance. House Bill 1344 does this. (As an aside, I would note that the bill also covers a guarantee by the National Credit Union Administration. At this point in time, I think NCUA limits its offerings to share insurance. However I understand an NCUA guarantee that is functionally equivalent to the FDIC guarantee is in the development stage with the expectation that it will be implemented later this year.)

Banks are not required to participate in the guarantee program. However, those that do not give notice of that fact to customers. In North Dakota, as of February 12, 13 banks have elected not to participate in the guarantee program based upon the profile of their customers and a cost/benefit analysis of the program. The banks electing not to participate in the guarantee programs have FDIC insurance coverage for their deposits up to \$250,000 per account. Participation in the program is not a safety and soundness issue.

***Reciprocal Deposit Placement Services for FDIC Insured Deposits***

This bill also makes it clearer that FDIC insured certificates of deposit that are obtained through a reciprocal deposit placement service are a permissible investment of public funds and that there is not requirement for a depository bank to post a bond or pledge securities for those insured certificates of deposit. We are asking for the statutes to be made clearer on this point so that public officials can look at the statutes themselves and see that insured CDs that are obtained through the service are expressly included in the lists of permissible investments, rather than having to obtain interpretations from the attorney general, states attorneys, or city attorneys. (The interpretations have been obtained, but I told for some counties, the officials want to see it stated more clearly in the applicable Code sections.)

So far as I am aware, there is only one reciprocal depository placement service currently operating, the CDARS program which is operated by the Promontory Interfinancial Network, LLC. ("CDARS" stands for "Certificate of Deposit Account Registry Service".) Several North Dakota state and national banks are members of the network and others are considering joining the network. Participation in the CDARS network allows banks to protect their depositors' large deposits with up to \$50 million in FDIC insurance coverage. Here's how it works:

When a large deposit is placed with a network bank, that bank uses a CDARS matching service to place the funds into certificates of deposit issued by banks in the network. All deposits are less than the standard FDIC insurance maximum, currently \$250,000 per account, to ensure that both principal and interest are fully FDIC insured. The matching system allows network banks

#1

exchange deposits on a dollar-for-dollar basis, so an amount equivalent to the original deposit is deposited in the North Dakota depository bank for use in its local operations. By using this service the full amount of public funds remains available for the local lending that is so critical to the economic livelihood of North Dakota communities. In all cases, the full amount of the original deposit receives complete FDIC insurance protection.

The CDARS program is accepted by state and federal bank regulatory agencies as a safe and sound tool that banks use to manage their liquidity. The reciprocal deposits "behave" like core deposits in that they are stable and available to fund local lending. FDIC insurance coverage of reciprocal deposits is not controversial or contested by FDIC. Some of the recent bank failures included banks that held CDARS deposits. Those deposits were paid out without issue.

The department of financial institutions now reviews CDARS deposits to verify they are within the FDIC insurance coverage limits. As an added protection for public depositors, the commissioner of financial institutions must determine which specific reciprocal deposit placement services are appropriate for public fund deposits. The commissioner agrees with this delegation of responsibility to his office.

From the perspective of a public depositor, an FDIC insured CDARS CD is no different than a CD that is issued directly from a local North Dakota bank. The program allows public depositors to keep funds flowing and revolving in the community to a much greater extent that would be easily achievable without the CDARS program and allows banks to do the same thing. Throughout the United States, public officials are finding that CDARS is a great and safe option for public deposits.

I have attached a map which shows the states in which the CDARS CDs are authorized investment vehicles for public funds. (North Dakota is included because of the statutory interpretations of the attorney general's office.)

#1

We hope this bill will encourage more North Dakota counties and cities to see what CDARS can do for them, but nothing in the bill actually requires any political subdivision to use the service.

We urge the Committee to give Engrossed House Bill 1344 a DO PASS.

#1

[How CDARS Works](#) | [Why CDARS](#) | [Where to Find CDARS](#) | [In the News](#) | [Home](#)
**Why CDARS**

- Advisors
- Associations
- Businesses
- Credit Unions
- Individuals
- Non-profits
- Public Funds
- Authorized States
- Socially Responsible Investors

**Availability of CDARS for Public Fund Investors by State****Specific Legislation by State**

AZ AR CA CO FL GA HI IA IL KS KY LA MD ME MI MN MS MO MT  
 NC ND NE NH NJ OH OK OR PA SC SD TN TX VA VT WI WV WY

For specific regulations in states not listed here, please contact us at 866-776-6426.

Each public funds depositor should confirm the availability of CDARS under the depositor's mandate.

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 Copyright 2004-2009 Promontory Interfinancial Network, LLC. U.S. Patent No. 7,376,606 and 7,440,914