

## Form #3

CITIZEN WEST VIRGINIA  
SECRETARY OF STATE

  
Authorized Signature

## QUESTIONNAIRE

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: July 25, 2013

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Diana Stout, General Counsel  
State Treasurer's Office, 1900 Kanawha Blvd., E., Bldg. 1,  
Room E-145, Charleston, WV 25305  
(304) 558-5000 diana.stout@wvsto.com

LEGISLATIVE RULE TITLE: 112 CSR 4 Procedures for Deposit of Monies with the Office by  
State Agencies

1. Authorizing statute(s) citation §12-2-2

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 25, 2013

b. What other notice, including advertising, did you give of the hearing?

Proposed Rules were posted on the Treasurer's Office website www.wvsto.com. Notices were  
sent to WV Banker's Association, Community Bankers of WV, Bowles Rice McDavid Graff &  
Love, the Governor's Office, Department of Revenue, Tax Division, Department of  
Administration, FARS and the State Auditor's Office.

c. Date of Public Hearing(s) *or* Public Comment Period ended:

Public Comment Period ended July 25, 2013 at 5:00 p.m.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached     X     No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 26, 2013

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Diana Stout, General Counsel

West Virginia State Treasurer's Office

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1900 Kanawha Blvd., E.

Charleston, WV 25305

Fax: (304) 341-7094

Ph: (304) 341-0745

Email: diana.stout@wvsto.com

- g. **IF DIFFERENT FROM ITEM 'f',** please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

## 112 CSR 4

### Summary

Revisions being made to 112 CSR 4, Procedures for Deposit of Moneys with the State Treasurer's Office by State Agencies, are to update the rule to conform to the West Virginia Code and current practice, as well as to make technical corrections. Definitions are deleted for Central Receipts Processing Center and Fund, as the terms are not used; a definition is added for Depository; and the definition of Lock Box is amended. The rule clarifies various matters, such as endorsements on checks must comply with Federal Reserve standards; agencies are to make redeposits with the Treasurer; deposits are required within one business days, a 2013 revision in the W.Va. Code from 24 hours; and clearing accounts are no longer used.

**STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE**

W. Va. Code §12-2-2 provides, "The State Treasurer shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code governing the procedure for deposits.

## APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

112 CSR 4 Procedure for Deposit of Moneies with the Office by State Agencies

Rule Title:

Type of Rule:

☒ Legislative ☐ Interpretive ☐ Procedural

Agency:

Treasurer's Office

Address:

Bldg. 1, Room E-145  
1900 Kanawha Blvd., E.

Charleston, WV 25305

Phone Number:

(304) 558-5000

Email: [diana.stout@wvsto.com](mailto:diana.stout@wvsto.com)**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

112 CSR 4 is being updated to conform to West Virginia Code and current practice, as well as make technical corrections. It is not anticipated to have any impact on costs and revenues of state government.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

112 CSR 4 Procedure for Deposit of Monies with the Office by State Agencies

Rule Title:

Rule Title: \_\_\_\_\_

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

N/A

**MEMORANDUM**

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

N/A

Date: June 19, 2013

Signature of Agency Head or Authorized Representative





FILED

2013 JUL 26 PM 4:16

**TITLE 112  
LEGISLATIVE RULE  
STATE TREASURER'S OFFICE**

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**SERIES 4  
PROCEDURES FOR DEPOSIT OF MONEYS  
WITH THE STATE TREASURER'S OFFICE BY STATE AGENCIES**

**§112-4-1. General.**

1.1. Scope. -- This rule implements the provisions of W.Va. Code § 12-2-2.

1.2. Authority. -- W.Va. Code § 12-2-2.

1.3. Filing Date. -- May 6, 1998 \_\_\_\_\_.

1.4. Effective Date. -- May 7, 1998 \_\_\_\_\_.

~~1.5. Purpose -- The general purpose of this rule is to establish a system by which moneys received by State agencies, officials and employees on behalf of the State of West Virginia shall be 1) deposited with the Office of the State Treasurer within twenty-four hours of receipt, 2) immediately and properly accounted for, and 3) immediately available for investment by the State. This purpose is in keeping with the legislative findings and purpose set forth in W.Va. Code § 12-1-1, which authorize the Office of the State Treasurer to develop and maintain modern systems, consistent with sound financial practices, for the collection, disbursement, management and investment of public moneys. This rule also is specifically directed toward implementing the Legislature's intent in W.Va. Code § 12-1-2, wherein State officers and employees are prohibited from making or causing deposits of State moneys to be made in any bank not designated as an authorized depository by the Office of the State Treasurer.~~

**§112-4-2. Definitions.**

For purposes of this rule, unless a different meaning clearly is required by the context:

2.1. "Agency" means and includes any department, board, commission, division, branch office or other separate unit of State government, and any officer or employee of the an agency, who or which collects moneys due the State;

2.2. ~~"Centralized Receipts Processing Center" (CRPC-RPC) means a central location operated by the Treasurer for receiving, processing and depositing all funds due~~

~~the State;~~

~~2.3. "Check" includes a bank draft, bank wire, money order, cashier's check, check written on the payor's checking account, and any other non-cash payment of funds due the State;~~

~~2.4. "Fund" means demand deposit account balances of which the Treasurer has use;~~

~~2.52.3. "Depository" or "State Depository" means a financial institution insured by an agency of the federal government which has posted any required collaterally secured bond and which is approved by the Treasurer.~~

~~2.4 "Financial institution" means a state or national bank or a state or federal savings and loan association.~~

~~2.5. "Lock Box" means a cash management system whereby moneys due a State agency are mailed to a post office box near the "CRPC". The CRPC collects the receipts from the lock box and processes both the receipt document and the check "Lockbox services" means the process in which payments and remittance forms are mailed to a post office box, retrieved and processed, and the moneys then deposited into a financial institution account;~~

~~2.6. "Receipt Account" means an account in which moneys are deposited belonging to or due the State of West Virginia or any of its agencies; and~~

~~2.7. "Treasurer" means the West Virginia State Treasurer.~~

### **§112-4-3. Procedures for Deposits.**

~~3.1. Receipts Depositories - The Treasurer shall establish state depositories for receipt accounts pursuant to the provisions of W. Va. Code § 12-1-2 and this rule. An agency collecting funds shall deposit its collections in a depository designated by the Treasurer to serve as a depository for that agency's receipt accounts a receipt account upon request for any agency.~~

#### **3.2. Methods for Depositing Funds Due the State -**

~~3.2.1. Checks - An agency shall deposit its check collections by any one or more of the following methods:~~

~~3.2.1.a. The agency's own employees may take the checks directly to the designated receipt depository;~~

3.2.1.b. An agency may use the services of a courier or armored car service engaged by the agency Treasurer to pick up deposits and deliver them to the designated depository;

~~3.2.1.c. The agency may use the services of a courier engaged by the Treasurer to pick up deposits from the agency and deliver them to the designated depository; or~~

~~3.2.1.d. An agency may use a lockbox, provided by Treasurer at his or her direction, at the Treasurer's centralized receipts processing center for direct processing the Treasurer's lockbox services for direct processing.~~

~~3.2.1.e~~ 3.2.1.d. The agency may use any other method approved in writing by the Treasurer;

3.2.2. Cash - An agency shall deposit its cash collections by any one or more of the methods authorized for deposit of checks by the Treasurer. In addition, an agency may use the safekeeping services of a night depository at any bank of the agency's choice a depository with an authorized receipt account.

3.2.3. Credit Cards - Agencies may accept credit card payments, using any one or more of the methods prescribed by the Treasurer, physical presentment of a credit card, verbal presentment by a voice payment system, or written authorization, or on a website approved by the Treasurer.

3.2.4 Direct Deposit - Upon approval from the Treasurer, an agency shall deposit its electronic collections at the depository that the Treasurer has established to receive electronic collections by two methods: FEDWIRE or an ACH (Automated Clearing House) transaction.

3.3. Bank Deposit Forms - The agency collecting ~~funds~~ moneys shall make its deposits using a form prescribed by the Treasurer.

3.4. Processing Deposit Forms - The Treasurer shall prescribe the method by which all deposit forms ~~shall be~~ are processed.

3.5. Redeposit of State Checks - When an agency ~~redeposits~~ desires to redeposit State checks, the ~~deposits shall be made either at the designated depository or agency shall make the redeposit directly to the Treasurer's office.~~

3.6. Endorsement of Deposited Checks - ~~Except for redeposits of State checks, the Treasurer shall endorse all checks received and deposited by agencies as in the following example:-~~

STATE OF WEST VIRGINIA

~~(AGENCY'S NAME)~~

~~FOR DEPOSIT ONLY~~

~~PAY TO THE ORDER OF~~

~~ANY BANK OR BANKER NO PROTEST~~

~~When a State check is redeposited, the Treasurer shall endorse the check as in the following example:~~

~~JOHN DOE~~

~~ABSENCE OF ENDORSEMENT~~

~~GUARANTEED REDEPOSIT TO~~

~~ACCOUNT NO. 1600-00-009-01~~

~~(REGULAR ENDORSEMENT STAMP AS SHOWN ABOVE)~~

The Treasurer shall endorse checks in accordance with applicable federal and state law.

3.7. Adjustments and Returned Checks - Whenever debit or credit tickets for adjustments to a previous deposit for returned checks are received by an agency from a depository, the agency shall process the debit or credit tickets by the means as directed by and on the forms prescribed by the Treasurer.

3.8. Frequency of Deposits - The collecting agency shall deposit all receipts daily within one business day in the designated depository.

3.9. Clearing Accounts - The requirements of Subsection 3.10 of this rule apply to every agency, notwithstanding that at the time of making the deposit the agency may not know the exact general ledger receipt account for preparation of the Treasurer's Deposit Form. If the agency does not know the exact general ledger receipt account, the agency shall obtain approval from the State Auditor to use a general ledger clearing account, and

the agency shall record its deposits in the general ledger clearing account. When the agency determines the exact general ledger accounts applicable to the funds deposited in the general ledger clearing account, it shall prepare a ~~Treasurer-prescribed~~ "Revenue Transfer" and transfer the funds from the general ledger clearing account to the appropriate general ledger receipt accounts.

3.10. Applicability of ~~This Rule~~ this rule - ~~It is presumed that all~~ All moneys collected or held by State agencies in the form of cash, ~~undeposited~~ checks, bank accounts, or in any other form, are public moneys subject to the requirements of W. Va. Code §12-1-2 and ~~of~~ this rule. In the event any agency believes that all or part of this rule may not apply to its operations and collections, or that all or part of the moneys held by it may not be governed by this rule, it shall submit to the Treasurer a written statement of the reasons for that belief. If the Treasurer disagrees with the agency's written statement, the agency must then deposit the ~~funds~~ moneys in accordance with the requirements of W. Va. Code §12-2-2 and this rule. The agency shall also furnish an itemization and accounting of the moneys ~~in question currently held by it~~, with the name of the bank, bank account number, and the name and purpose of the account in which the moneys ~~in question are~~ were deposited.



# STATE OF WEST VIRGINIA

Department of Revenue  
State Tax Department

112 CSR 4

Earl Ray Tomblin  
Governor

Mark W. Matkovich  
Acting State Tax Commissioner

July 15, 2013

The Honorable John Perdue  
West Virginia State Treasurer  
1900 Kanawha Blvd., East  
Capitol Complex - Bldg. 1, 10<sup>th</sup> Floor  
Charleston, WV 25305

Dear Treasurer Perdue:

The West Virginia State Tax Department ("Tax") has enjoyed a positive relationship with the Treasurer's Office for years. Tax has worked in concert with your office on many projects to improve state tax administration. This letter outlines our review of your proposed legislative rules.

As you may know, Tax administers the State's tax laws and collects revenue due the State. The Tax Department is accountable for over \$4 billion in annual tax receipts which includes approximately \$160 million from delinquent taxpayers through collection cases. Tax is responsible for capturing data for approximately 3.5 million tax returns that represent 41 state-administered tax types and an array of credits. Tax provides accountability for payments and tax return filings from over one million taxpayers.

The rule deletes what was W.Va. CSR 112-4-3.9 that permitted agencies to request approval for the use of a clearing account when the general ledger account number was unavailable. However, State code provides that the State Treasurer may not review or amend the procedures by which the Department of Revenue accepts money due the state. For this reason, Tax concludes that the proposed rule changes do not apply to our processes. If you have information to the contrary, please let us know and we ask that you review our comment carefully.

For your information, a clearing account was established to help Tax's Revenue Division streamline and improve the processing of GenTax payment vouchers and deposit all monies received with these payment vouchers on a daily basis. According to Mark Muchow, daily reporting for the last fiscal year indicates that more than \$127.2 million in deposits flowed through the clearing account during the twelve-month period. The monthly deposit totals ranged between a low of \$8.5 million in June and a high of \$15.9 million in October. The clearing house deposit allows for a one-day advance deposit of funds not readily classified by tax type. Most funds are either withholding tax or sales tax provided some funds are attributable to other possible tax types.

If Tax is unable to use a clearing account, the process will revert to a more burdensome method of processing these vouchers. Each payment voucher is prepped by tax type (sorting becomes more complex and time consuming) and processed in separate batches. Each batch stops


The Honorable John Perdue  
July 12, 2013  
Page 2

for a manual entry of the tax type (code) before the batch financials can be processed. When this process stops for manual entry, all processing is halted at this point until the correct tax type (code) is entered. This requires more time to prep the vouchers and because of the delay in processing, payments will not be deposited on the same day they are received.

From January 2013 thru June 2013, Tax has processed approximately 80,000 payment vouchers.

Tax wishes to work cooperatively with your office. In that vein, might I recommend that you call me should you have any questions about this or any other important matters where collaborative efforts might benefit each office. We appreciate the opportunity to be of service.

Sincerely,



Mark W. Matkovich  
Acting Tax Commissioner

cc: Secretary Robert S. Kiss



JOHN D. PERDUE  
STATE TREASURER

# State of West Virginia

OFFICE OF THE STATE TREASURER  
CHARLESTON, WV 25305

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DANNY ELLIS  
ASSISTANT STATE TREASURER

July 26, 2013

Mark W. Matkovich  
Acting Tax Commissioner  
Department of Revenue  
PO Box 11771  
Charleston, WV 25339-1771

Re: Proposed Amendments to 112 CSR 4

Dear Mark:

Thank you for submitting comments pertaining to proposed amendments to legislative rule 112 CSR 4. We too have enjoyed the excellent communications and working relationship between our Offices, and look forward to continuing that relationship.

Your letter mentions the exemption in W. Va. Code §12-2-2 for the Department of Revenue, which provides, "the state Treasurer may not review or amend the procedures by which the Department of Revenue accepts moneys due the state." The revisions to this rule are not intended to affect collection operations of the Department of Revenue in any way.

More specifically, your letter discusses the deleted provision in W. Va. Code R. §112-4-3.9 and the importance of the clearing account you use. We had deleted that provision because our Cash Management staff believed that clearing accounts were no longer used. To ensure there is not a problem for your or any other entity that may need or use a clearing account, we will reinstate that provision in the rule, with a minor modification.

If you have any further issues or questions, do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Diana".

Diana Stout  
General Counsel

DS/wlh

C: Treasurer John Perdue  
Secretary Robert S. Kiss



## Harrison, Wilma

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**From:** Merbedone, Christina  
**Sent:** Thursday, July 25, 2013 9:26 AM  
**To:** Harrison, Wilma  
**Subject:** FW: Comments to Proposed STO Legislative Rules letter attachment  
**Attachments:** Comments to Proposed STO Legislative Rules letter attachment.docx

FYI

**From:** Ellis, Danny  
**Sent:** Friday, July 19, 2013 7:58 AM  
**To:** Price, Misty; Merbedone, Christina  
**Subject:** FW: Comments to Proposed STO Legislative Rules letter attachment

I think I sent this to you earlier

---

**From:** Erica Boggess [<mailto:EBoggess@wyhdf.com>]  
**Sent:** Tuesday, July 16, 2013 2:31 PM  
**To:** Ellis, Danny  
**Subject:** Comments to Proposed STO Legislative Rules letter attachment

Danny,

Attached are the comments to the proposed legislative rules that give me a bit of concern. As you are aware, the Housing Development Fund is a governmental instrumentality of the State and a public body corporate, but it is not a State agency. Similar to other State funding entities, it has a role separate and apart from the daily operations of State government. The Housing Development Fund receives no State appropriations; it is self-supporting. We are hoping to get some clarification on some of the definitions used in the proposed rules.

Let me know when you have some time to meet.

Thank you.

Erica

Erica L. Boggess, CPA  
Acting Executive Director  
West Virginia Housing Development Fund  
5710 MacCorkle Ave SE  
Charleston, WV 25304

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## **Comments to Proposed Legislative Rules of the State Treasurer's Office**

### **Title 112 CSR Series 6: Selection of State Depositories for Disbursement Accounts Through Competitive Bidding**

1. As currently written, the definition of "disbursement account" contained in §112-6-2.3 would appear to include the Housing Development Fund. W. Va. Code §§ 12-1-2(g) and 12-1-7 make clear that the provisions of those sections, which grant the rulemaking authority for this proposed rule, do not apply to the Housing Development Fund. There should be clarification to ensure the provisions of this proposed rule are not applied to the Housing Development Fund.

### **Title 112 CSR Series 12: Procedures for Fees in Collections by Charge, Credit or Debit Card or by Electronic Payment**

1. The definition of "spending unit" contained in §112-12-2.18 specifically refers to an entity for which appropriation being requested from or made by the Legislature. The Housing Development Fund does not fit within this definition, as it neither requests nor receives an appropriation from the Legislature. Thus, the provisions of this proposed rule do not apply to the Housing Development Fund.

### **Title 112 CSR Series 4: Procedures for Deposit of Moneys with the State Treasurer's Office by State Agencies**

1. The proposed changes to the definition of "agency" contained in §112-4-2.1 from "who or which collects moneys due the State" to "collecting moneys" would appear to make the Housing Development Fund subject to the provisions of the proposed rule. The language for this definition should either remain as it is currently under the existing rule, or further clarification should be made to ensure the provisions of this proposed rule are not applied to the Housing Development Fund.
2. The provisions of §112-4-3.9 (under the existing rule, §112-4-3.10), relating to the applicability of the proposed rule, should not be interpreted to apply to the Housing Development Fund. The moneys which are collected by the Housing Development Fund are not considered public funds, and as such, should not fall within the provisions of this proposed rule. Prior to the proposed change to the definition of "agency" discussed immediately above, it was clear that this proposed rule would not apply to the Housing Development Fund.

### **Title 112 CSR Series 7: Selection of State Depositories for Receipt Accounts**

1. The proposed changes to the definition of "agency" contained in §112-7-2.2 from "moneys due the state" to "state funds," and the definition of "state funds" contained in §112-7-2.8 would appear to make the Housing Development Fund subject to the provisions of this proposed rule. W. Va. Code §§ 12-1-2(g) and 12-1-7 make clear that the provisions of those sections, which grant the rulemaking authority for this proposed rule, do not apply to the Housing Development Fund. There should be clarification to ensure the provisions of this proposed rule are not applied to the Housing Development Fund.



# State of West Virginia

OFFICE OF THE STATE TREASURER  
CHARLESTON, WV 25305

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STATE TREASURER

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July 26, 2013

Erica L. Boggess, CPA  
Acting Executive Director  
West Virginia Housing Development Fund  
5710 MacCorkle Avenue, SE  
Charleston, WV 25304

Re: Proposed Amendments to Legislative Rules

Dear Erica:

Thank you for submitting comments pertaining to the proposed amendments to our legislative rules. We appreciate the time and effort the West Virginia Housing Development Fund ("HDF") took to review and submit comments. Our responses follow as they pertain to each rule:

1. 112 CSR 4  
You have requested we ensure the provisions of this rule do not apply to the HDF. It was not our intent to include the HDF under this rule and have returned the definition of "Agency" to its current language in W. Va. Code R. §112-4-2.1, with one minor revision.
2. 112 CSR 6  
You have requested we ensure the provisions of this rule do not apply to the HDF. It was not our intent to include the HDF under this rule and have added a clause in W. Va. Code R. §112-6-1.1 that effectively recites the provisions of W. Va. Code §12-1-2(g) as to entities to which the rule is not applicable.
3. 112 CSR 7  
You have requested we ensure the provisions of this rule are not applied to the HDF. It was not our intent to include the HDF under this rule and have returned the definition of "Agency" to its current language in W. Va. Code R. §112-7-2.1, with one minor revision. In addition, the language already contained in W. Va. Code R. §112-7-1.1 should alleviate your concerns.
4. 112 CSR 12  
You have noted that this rule does not apply to the HDF and we concur.

Hopefully I have addressed all of your comments in a manner that alleviates your concerns. If you have any further issues or questions, do not hesitate to contact me.

Sincerely,

  
Diana Stout  
General Counsel

DS/wlh

C: Treasurer John Perdue

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Martinsburg, West Virginia 25401

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Telephone — (304) 347-1131  
Facsimile — (304) 343-3058

July 24, 2013

E-Mail Address:  
smurphy@bowlesrice.com

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West Virginia State Treasurer's Office  
Building 1, Room E-145  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305

**VIA U. S. MAIL AND ELECTRONIC  
TRANSMISSION**

Re: Request for Public Comment on Legislative Rule-Making –Procedure for  
Deposit of Moneys with the State Treasurers Office By State Agencies, 112  
CSR 4; Selection of State Depositories for Disbursement Accounts Through  
Competitive Bidding 112 CSR 6; Selection of State Depositories for Receipt  
Accounts, 112 CSR 7 (the "Proposed Rules")

Dear Ms. Stout:

This letter is submitted on behalf of the West Virginia Bankers Association and the  
Community Bankers of West Virginia (the "Associations") with respect to the Proposed Rules  
promulgated by the State Treasurer's Office pursuant to its authority under W. Va. Code § 12-1-2  
and West Virginia Code § 12-2-1.

The Associations appreciate this opportunity to comment on the Proposed Rules. Our  
comments are intended to identify areas in which we believe the Proposed Rules exceed the  
Treasurer's statutory authority and to highlight matters we believe the Treasurer's Office should  
consider in formulating the final rules.

1. Comments Concerning Proposed Rule Relating to Procedure for Deposit of Monies  
with the State Treasurer's Office by State Agencies. With respect to the proposed changes to  
112 C.S.R. 4, Procedures for Deposit of Monies with the State Treasurer's Office by State  
Agencies, the Associations have the following comments:

- Section 2.1 the definition of "Agency" should be revised to reinsert the words  
"due the State" after the phrase "collecting moneys."
- We believe text has been inadvertently omitted from Section 2.3 which should  
be amended to read: "Depository" or "State Depository" means a financial

Diana Stout, General Counsel  
West Virginia State Treasurer's Office  
July 24, 2013  
Page 2

institution insured by an agency of the federal government which has posted any required collaterally secured bond and *which is* approved by the Treasurer." (Emphasis added to show suggested change.)

For the reasons discussed in Comment 2 below, an appropriately drafted definition of "financial institution" should also be included in this section.

- Section 3.6 Endorsement of Deposited Checks. The proposed rule revises this provision to provide that the Treasurer shall endorse checks in accordance with "Federal Reserve standards." We believe this is a reference to indorsement requirements set forth in Part C and Appendix D of Federal Reserve Regulation CC, which prescribe proper endorsements **by depository and collecting banks** using the Federal Reserve System. Customer indorsement requirements are typically a matter of state law and are covered under Articles 3 and 4 of the Uniform Commercial Code. We believe this section should be revised to delete this reference, or to clarify the procedures the proposed rule intends to incorporate by reference.

2. Comments Concerning Proposed Rule Relating to Selection of State Depositories for Disbursement Accounts Through Competitive Bidding. With respect to the proposed changes to **112 CSR 6, Selection of State Depository for Disbursement Accounts with Competitive Bidding**, the Associations have the following comments:

The Associations are concerned that the proposed changes to Section 2.4 impermissibly expand the types of financial institutions that may hold state funds to include entities beyond those specifically allowed by statute. The statute pursuant to which the proposed rule is promulgated expressly provides:

The State Treasurer shall designate **the state and national banks and the state and federal savings and loan associations** in this state meeting the requirements of this chapter as depositories for all state funds placed in demand deposits. W. Va. Code § 12-1-2(a) (emphasis added.)

Section 12-1-2(e) of the statute also limits depositories to banks and savings and loans associations:

(e) Except as otherwise provided in this code, **only banks and state and federal savings and loan associations** designated by the State Treasurer as depositories may accept deposits of state funds. Only the Legislature and the State Treasurer may determine whether funds are state funds and only the State Treasurer may approve the opening of an account or processing of a

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transaction with a financial institution. W. Va. Code § 12-1-2(e) (emphasis added.)

This limitation is also expressly articulated in W. Va. Code § 12-1-3:

**Any state or national bank or any state or federal savings and loan association in this state shall, upon request made to the state treasurer, be designated as an eligible depository for interest earning deposits of state funds if such bank or state or federal savings and loan association meets the requirements set forth in this chapter. W. Va. Code § 12-1-3 (emphasis added.).**

Accordingly, the Associations respectfully request that the definition of financial institution be revised to provide that "financial institution" means a state, national bank or state or federal savings and loan association. All other financial institution references should be deleted since they are not permitted by the statute.

In addition, not all banks and savings and loan are "under the jurisdiction of the Federal Reserve" as set forth in the proposed definition. For example, national banks are members of the Federal Reserve System but are regulated by the Office of the Comptroller of the Currency. This reference to the Federal Reserve System should be deleted.

3. Comments Concerning Proposed Rule Relating to Selection of State Depositories for Receipt Accounts. With respect to the proposed changes to **112 C.S.R. 7, Selection of State Depositories for Receipt Accounts**, the Associations have the following comments:

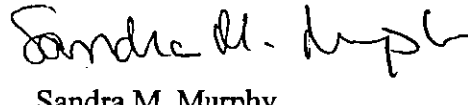
- Section 2.6, should be amended to read: "Depository" or "State Depository" means a financial institution insured by an agency of the federal government, which has posted any required collaterally secured bond and *which is* approved by the Treasurer." (emphasis added to show change.)

The revised definition of "financial institution" suggested in Comment 2, above, should also be included in this proposed rule.

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The Associations appreciate this opportunity to comment on the Proposed Rules. Should you have any questions regarding the Associations' comments, please do not hesitate to contact the undersigned.

Very truly yours,



Sandra M. Murphy

SMM/jam

cc: Joe Ellison  
Donna Tanner



# State of West Virginia

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July 26, 2013

Sandra M. Murphy, Esq.  
Bowles Rice LLP  
Attorneys at Law  
PO Box 1386  
Charleston, WV 25325-1386

Re: Proposed Amendments to Legislative Rules

Dear Sandy:

Thank you for submitting comments on behalf of the West Virginia Bankers Association and the Community Bankers of West Virginia (the "Associations") pertaining to the proposed amendments to our legislative rules. We appreciate the time and effort the Associations took to review and submit comments. Our responses follow as they pertain to each rule:

1. 112 CSR 4
  - a. "Agency" definition  
You have requested we revise the definition of "Agency" to add "due the State." To alleviate the issue, we have just deleted the amendments in W. Va. Code R. §112-4-2.1 and made one minor revision.
  - b. "Depository" definition  
You have requested and we have used your requested revised language.
  - c. "Financial institution" definition  
You have requested we draft an appropriate definition of "financial institution" and include it in the rule. We believe we have done so.
  - d. Section 3.6 Endorsement of Deposited Checks  
You have requested we revise this section to delete reference to Federal Reserve Standards or to clarify the procedures referenced. We have amended the language to state, "The Treasurer shall endorse checks in accordance with applicable federal and state laws."
2. 112 CSR 6  
You have requested we revise the definition of "financial institution" and have done so.
3. 112 CSR 7
  - a. "Depository" definition



- b. You have requested and we have used your requested revised language.  
"Financial institution" definition  
You have requested that we draft an appropriate definition of "financial institution" and include it in the rule. We believe we have done so.

Hopefully I have addressed all of your comments in a manner that alleviates the concerns of the Associations. If you have any further issues or questions, do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Diana".

Diana Stout  
General Counsel

DS/wlh

C: Treasurer John Perdue

## Reasons for Amendments

Amendments were made to address revisions to the Code made during the 2013 Legislative Session in Enrolled Committee Substitute for H. B. 2837 and to address the concerns raised in written comments on the Rule.