

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

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2013 JUL 26 PM 4:17

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Form #3

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Treasurer's Office TITLE NUMBER: 112

CITE AUTHORITY: §12-1-2

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 06

TITLE OF RULE BEING AMENDED: Selection of State Depositories for Disbursement Accounts through
Competitive Bidding

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


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 6 Selection of State Depositories for Disbursement~~
Accounts through Competitive Bidding

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

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 24, 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 24, 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
Bldg. 1, Room E-145
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 6

Summary

Revisions being made to 112 CSR 6, Selection of State Depositories for Disbursement Accounts through Competitive Bidding, are to update the rule to conform to the West Virginia Code and current practice, as well as to make technical corrections. Definitions are added for depository and financial institution. The rule clarifies various matters, such as financial institutions, not just banks, are able to bid; payment for disbursement accounts and related services include either compensating balances or actual payment; and account information will no longer be disclosed in bid documents.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE

W. Va. Code §12-1-2(c) 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, concerning depositories for receipt accounts prescribing the selection criteria, procedures, compensation and any other contractual terms it considers to be in the best interests of the state giving due consideration to: (1) The activity of the various accounts maintained in the depositories; (2) the reasonable value of the banking services rendered or to be rendered the state by the depositories; and (3) the value and importance of the deposits to the economy of the communities and the various areas of the state affected by the deposits." Based upon these requirements, we have 112 CSR 6 pertaining to the competitive selection of state depositories for disbursement accounts and 112 CSR 7 pertaining to the general requirements for being a state depository.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

112 CSR 6 Selection of State Depositories for Disbursement Accounts through Competitive Bidding

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

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 6 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 6 Selection of State Depositories for Disbursement Accounts through Competitive Bidding

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

Diana Stout

FILED

2013 JUL 25 PM 4:17

TITLE 112
LEGISLATIVE RULE
STATE TREASURER'S OFFICE

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 6
SELECTION OF STATE DEPOSITORIES FOR DISBURSEMENT ACCOUNTS
THROUGH COMPETITIVE BIDDING

§112-6-1. General.

1.1. Scope. -- This rule implements the provisions of W. Va. Code §12-1-2, which requires the Treasurer's Office to select depositories for disbursement accounts through competitive bidding by ~~banks~~ financial institutions in this State. The provisions of this rule do not apply to trust and investment accounts, activities and proceeds from the sale of general obligation bonds or bonds issued by the School Building Authority, the Parkways Authority, the Housing Development Fund, the Economic Development Authority, the Infrastructure and Jobs Development Counsel, the Water Development Authority or the Hospital Finance Authority.

1.2. Authority. -- W. Va. Code § 12-1-2.

1.3. Filing Date. -- ~~May 6, 1998~~ _____.

1.4. Effective Date. -- ~~May 7, 1998~~ _____.

~~1.5. General Purpose. -- The purpose of this rule is to carry out the legislative intent as stated in W. Va. Code § 12-1-2, so that the required competitive bidding will enable the State to obtain the most efficient service at the lowest possible cost.~~

§112-6-2. Definitions.

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

2.1. "Compensating balance" means the cash balance which the State shall maintain with a depository to compensate the depository for its services;

2.2. "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.

2.3. "Disbursement account" means those accounts from which are paid moneys due from the State of West Virginia or any official, department, board, commission, political

subdivision or agency thereof to any political subdivision, person, firm or corporation except moneys paid from investment accounts;

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

2.5. "Invitation to bid" means and includes requests for proposals, specifications, general information and other matters customarily included in the solicitation of bids; and

2.42.6. "Treasurer" means the West Virginia ~~Office of the State Treasurer.~~

§112-6-3. Procedures for Bidding.

3.1. Eligibility for Bidding - Only those ~~banks that have been~~ financial institutions designated to ~~serve as depositories for State funds~~ are eligible to bid for a disbursement account.

3.2. Notice to Bidders - At least twenty-five (25) days prior to the date on which bids for a disbursement account ~~will be opened~~ are due, the Treasurer shall mail to every ~~eligible~~ depository within this state notice that bids ~~will be~~ are invited on one or more designated disbursement accounts. Any depository within this state interested in bidding on an account shall ~~then~~ make written request to the Treasurer's office for copies of the formal invitation to bid, and the Treasurer's office upon receipt of the request shall transmit the copies or make the copies available, including all necessary specifications and forms, to the depository. The Treasurer's office shall maintain a record noting the date of receipt of requests for formal invitations to bid and the date on which it mailed the invitations.

3.3. Contents of Invitations to Bid - The invitations shall state the time and place for submission of bids, ~~and shall include~~ a description of the account and the service services required, the approximate number of transactions or items ~~to be~~ processed monthly, the duration of the contracts to be awarded, ~~the designated account number of the accounts for which bids are being sought~~, and such any other information ~~as~~ the Treasurer considers necessary.

3.4. Submission of Bids - Depositories with in the state shall submit bids on forms provided by the Treasurer's office ~~in duplicate~~, in a sealed envelope addressed to the Treasurer, and conspicuously marked "Sealed Bid for Disbursement Account". ~~The bidder shall also note on the envelope the account number as designated in the invitation to bid.~~ Bidders may not commingle bids for more than one account in the same envelope. Immediately upon receipt of bids, the Treasurer shall time stamp the envelope, and retain all the sealed bids in the Treasurer's office until the time set for the bid opening.

3.5. Bid Opening - On the date and time set for the bid opening, the Treasurer shall publicly open and read aloud the bids names of the bidders. The Treasurer shall promptly analyze the bids and make awards as provided in Section 4 of this rule.

3.6. Conditions of Bidding - All bids are subject to the following conditions:

3.6.1. Bids received after the date and time stated in the invitation ~~may not be considered~~ are disqualified;

3.6.2. Bids ~~may not be considered unless signed by~~ shall require the signature of an authorized bank officer. For purposes of this section, an authorized bank officer ~~may be either~~ is the president or a vice-president ~~or the cashier~~;

3.6.3. Prior to the bid opening, ~~bids may be withdrawn after receipt in the Treasurer's office upon written request made by an authorized bank officer~~ to withdraw a bid, an authorized bank officer shall submit a written request to the Treasurer; or

3.6.4. The Treasurer may reject any and all bids if ~~that action is considered to be~~ the Treasurer considers rejection in the best interests of the State.

§112-6-4. Award and Compensation.

4.1. Criteria for Award - Depending on the ~~service to be performed~~ services desired, the Treasurer shall invite bids in terms of the price per transaction or per item processed. Accordingly, ~~subject~~ Subject to the Treasurer's right to reject any and all bids, the ~~contract shall be awarded in each case to the bidder who submits~~ submitting the lowest responsible bid in terms of price per transaction or per item processed shall receive the award. The bid price ~~will be~~ is the basis for the compensating balance as provided in Subsection 4.2 of this section.

4.2. Method of Compensation --

4.2.1. ~~Compensation to the depository within the state for its services shall be made by means of either compensating balances computed by the Treasurer~~ The Treasurer shall compensate a depository on a monthly basis by compensating balances or by a State warrant. To determine the monthly compensating balances, the Treasurer shall multiply the ~~depository' within the state's~~ bid price per transaction or per item processed times the number of transactions or items processed during the preceding month (the "computation month"). The product obtained ~~shall be~~ is converted to the compensating balance by using the average 90-day U. S. Treasury bill rate (bond equivalent yield) for the computation month. The average 90- day U. S. Treasury bill rate ~~shall be~~ is the rate ~~as~~ computed by the Federal Reserve System. The following example illustrates how the compensating balance ~~shall be~~ is computed and applied:

Under this example, it is assumed that:

4.2.1.a. The computation month is January;

4.2.1.b. The average 90-day U. S. Treasury bill rate for the computation month (January) was 5%;

4.2.1.c. The multiplier for annualization is 12;

4.2.1.d. The bid price per item was three cents (\$.03); and

4.2.1.e. The number of items processed in the computation month (January) was 50,000.

Accordingly, the compensating balance ~~to be maintained in the bank required~~ during February is \$360,000, derived as follows:

$$\underline{50,000 \times (\$.03) \times (12)}$$

$$.05 = \$360,000$$

4.2.2. The Treasurer shall appropriately adjust the compensating balance if any overcompensation or undercompensation occurs during a given month by adjusting the balance for the following month in order to fairly compensate the depository for services rendered. The Treasurer shall perform a settlement monthly if any overcompensation or undercompensation occurs. The Treasurer and the depository ~~within the state~~ shall agree upon a method of account settlement and include the account settlement as part of the negotiated contract for the ~~Disbursement Account~~ disbursement account.

4.3. Compensation for Ancillary Services - The Treasurer may in its bid specifications require the depository to furnish certain named ancillary services in the course of providing the basic service for which bids are solicited. For example, the Treasurer may specify that a depository for disbursements shall furnish preprinted checks. The Treasurer may also specify ~~that the depository shall be compensated~~ the compensation for the cost of furnishing such ancillary services on a flow-through basis. In that event, the Treasurer shall increase the compensating balance in an amount sufficient to compensate the depository for the direct cost of furnishing the ancillary services plus a reasonable amount determined by the Treasurer for the overhead attributable to furnishing the services. ~~The amount to be allowed for the overhead shall be specified in the invitation to bid~~ shall include the amount allowed for overhead.

101 South Queen Street
Martinsburg, West Virginia 25401

7000 Hampton Center
Morgantown, West Virginia 26505

511 7th Street
Moundsville, West Virginia 26041

501 Avery Street
Parkersburg, West Virginia 26101



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Sandra M. Murphy
Telephone — (304) 347-1131
Facsimile — (304) 343-3058

July 24, 2013

E-Mail Address:
smurphy@bowlesrice.com

Diana Stout, General Counsel
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

Diana Stout, General Counsel
West Virginia State Treasurer's Office
July 24, 2013
Page 3

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:

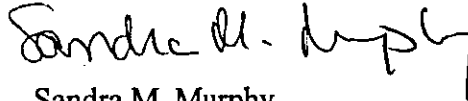
- Section 2.6, should be amended to read: "Depository" or "State Depository" means a financial institution insured by an agency of the federal *government*, which has posted any required collaterally secured bond and *which is* approved by the Treasurer." (emphasis added to show change.)

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

Diana Stout, General Counsel
West Virginia State Treasurer's Office
July 24, 2013
Page 4

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

OFFICE OF THE STATE TREASURER
CHARLESTON, WV 25305

JOHN D. PERDUE
STATE TREASURER

DANNY ELLIS
ASSISTANT STATE TREASURER

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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

- You have requested and we have used your requested revised language.
- b. "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,



Diana Stout
General Counsel

DS/wlh

C: Treasurer John Perdue

Harrison, Wilma

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@wvhdf.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

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DANNY ELLIS
ASSISTANT STATE TREASURER

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,

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.

TITLE 112
LEGISLATIVE RULE
STATE TREASURER'S OFFICE

SERIES 6
SELECTION OF STATE DEPOSITORIES FOR DISBURSEMENT ACCOUNTS
THROUGH COMPETITIVE BIDDING

§112-6-1. General.

1.1. Scope. -- This rule implements the provisions of W. Va. Code §12-1-2, which requires the Treasurer's Office to select depositories for disbursement accounts through competitive bidding by ~~banks~~ financial institutions in this State.

1.2. Authority. -- W. Va. Code § 12-1-2.

1.3. Filing Date. -- ~~May 6, 1998~~ _____.

1.4. Effective Date. -- ~~May 7, 1998~~ _____.

~~1.5. General Purpose. -- The purpose of this rule is to carry out the legislative intent as stated in W. Va. Code § 12-1-2, so that the required competitive bidding will enable the State to obtain the most efficient service at the lowest possible cost.~~

§112-6-2. Definitions.

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

2.1. "Compensating balance" means the cash balance which the State shall maintain with a depository to compensate the depository for its services;

2.2. "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 approved by the Treasurer.

2.3. "Disbursement account" means those accounts from which are paid moneys due from the State of West Virginia or any official, department, board, commission, political subdivision or agency thereof to any political subdivision, person, firm or corporation except moneys paid from investment accounts;

2.32.4. "Financial institution" means a bank, savings and loan association, credit union and any other similar institution under the jurisdiction and supervision of the Federal Reserve.

2.5. "Invitation to bid" means and includes requests for proposals, specifications, general information and other matters customarily included in the solicitation of bids; and

2.42.6. "Treasurer" means the West Virginia Office of the State Treasurer.

§112-6-3. Procedures for Bidding.

3.1. Eligibility for Bidding - Only those ~~banks that have been~~ financial institutions designated to ~~serve~~ as depositories for ~~State funds~~ are eligible to bid for a disbursement account.

3.2. Notice to Bidders - At least twenty-five (25) days prior to the date on which bids for a disbursement account ~~will be opened~~ are due, the Treasurer shall mail to every eligible depository within this state notice that bids ~~will be~~ are invited on one or more designated disbursement accounts. Any depository within this state interested in bidding on an account shall ~~then~~ make written request to the Treasurer's office for copies of the formal invitation to bid, and the Treasurer's office upon receipt of the request shall transmit the copies or make the copies available, including all necessary specifications and forms, to the depository. The Treasurer's office shall maintain a record noting the date of receipt of requests for formal invitations to bid and the date on which it mailed the invitations.

3.3. Contents of Invitations to Bid - The invitations shall state the time and place for submission of bids, ~~and shall include~~ a description of the account and the service services required, the approximate number of transactions or items ~~to be~~ processed monthly, the duration of the contracts ~~to be awarded~~, ~~the designated account number of the accounts for which bids are being sought~~, and such any other information ~~as~~ the Treasurer considers necessary.

3.4. Submission of Bids - Depositories with in the state shall submit bids on forms provided by the Treasurer's office ~~in duplicate~~, in a sealed envelope addressed to the Treasurer, and conspicuously marked "Sealed Bid for Disbursement Account". ~~The bidder shall also note on the envelope the account number as designated in the invitation to bid.~~ Bidders may not commingle bids for more than one account in the same envelope. Immediately upon receipt of bids, the Treasurer shall time stamp the envelope, and retain all the sealed bids in the Treasurer's office until the time set for the bid opening.

3.5. Bid Opening - On the date and time set for the bid opening, the Treasurer shall publicly open and read aloud the bids names of the bidders. The Treasurer shall promptly analyze the bids and make awards as provided in Section 4 of this rule.

3.6. Conditions of Bidding - All bids are subject to the following conditions:

3.6.1. Bids received after the date and time stated in the invitation ~~may not be considered~~ are disqualified;

3.6.2. Bids ~~may not be considered unless signed by~~ shall require the signature of an authorized bank officer. For purposes of this section, an authorized bank officer ~~may be either~~ is the president or a vice-president ~~or the cashier~~;

3.6.3. Prior to the bid opening, bids ~~may be withdrawn after receipt in the Treasurer's office upon written request made by an authorized bank officer~~ to withdraw a bid, an authorized bank officer shall submit a written request to the Treasurer; or

3.6.4. The Treasurer may reject any and all bids if ~~that action is considered to be the~~ Treasurer considers rejection in the best interests of the State.

§112-6-4. Award and Compensation.

4.1. Criteria for Award - Depending on the ~~service to be performed~~ services desired, the Treasurer shall invite bids in terms of the price per transaction or per item processed. ~~Accordingly, subject~~ Subject to the Treasurer's right to reject any and all bids, the ~~contract shall be awarded in each case to the bidder who submits~~ submitting the lowest responsible bid in terms of price per transaction or per item processed shall receive the award. The bid price ~~will be~~ is the basis for the compensating balance as provided in Subsection 4.2 of this section.

4.2. Method of Compensation --

4.2.1. ~~Compensation to the depository within the state for its services shall be made by means of either compensating balances computed by the Treasurer~~ The Treasurer shall compensate a depository on a monthly basis by compensating balances or by a State warrant. To determine the monthly compensating balances, the Treasurer shall multiply the ~~depository's~~ depository's bid price per transaction or per item processed times the number of transactions or items processed during the preceding month (the "computation month"). The product obtained ~~shall be~~ is converted to the compensating balance by using the average 90-day U. S. Treasury bill rate (bond equivalent yield) for the computation month. The average 90- day U. S. Treasury bill rate ~~shall be~~ is the rate ~~as~~ computed by the Federal Reserve System. The following example illustrates how the compensating balance ~~shall be~~ is computed and applied:

Under this example, it is assumed that:

4.2.1.a. The computation month is January;

4.2.1.b. The average 90-day U. S. Treasury bill rate for the computation month (January) was 5%;

4.2.1.c. The multiplier for annualization is 12;

4.2.1.d. The bid price per item was three cents (\$.03); and

4.2.1.e. The number of items processed in the computation month (January) was 50,000.

Accordingly, the compensating balance ~~to be maintained in the bank required~~ during February is \$360,000, derived as follows:

$$\underline{50,000 \times (\$.03) \times (12)}$$

$$.05 = \$360,000$$

4.2.2. The Treasurer shall appropriately adjust the compensating balance if any overcompensation or undercompensation occurs during a given month by adjusting the balance for the following month in order to fairly compensate the depository for services rendered. The Treasurer shall perform a settlement monthly if any overcompensation or undercompensation occurs. The Treasurer and the depository ~~within the state~~ shall agree upon a method of account settlement and include the account settlement as part of the negotiated contract for the ~~Disbursement Account~~ disbursement account.

4.3. Compensation for Ancillary Services - The Treasurer may in its bid specifications require the depository to furnish certain named ancillary services in the course of providing the basic service for which bids are solicited. For example, the Treasurer may specify that a depository for disbursements shall furnish preprinted checks. The Treasurer may also specify ~~that the depository shall be compensated~~ the compensation for the cost of furnishing such ancillary services on a flow-through basis. In that event, the Treasurer shall increase the compensating balance in an amount sufficient to compensate the depository for the direct cost of furnishing the ancillary services plus a reasonable amount determined by the Treasurer for the overhead attributable to furnishing the services. The ~~amount to be allowed for the overhead shall be specified in the invitation to bid~~ shall include the amount allowed for overhead.