

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

Form #3

Do Not Mark In This Box

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2013 JUL 26 PM 4: 21

SECRETARY OF STATE  
STATE OF WEST VIRGINIA

**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: 07

TITLE OF RULE BEING AMENDED: Selection of State Depositories for Receipt Accounts

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



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

July 26, 2013

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- 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

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- 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)

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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

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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 7

### Summary

Revisions being made to 112 CSR 7, Selection of State Depositories for Receipt Accounts, are to update the rule to conform to the West Virginia Code and current practice, as well as to make technical corrections. Definitions are amended and the prohibition that financial institutions cannot be depositories for state funds if someone working for the Treasurer's Office is related to a director or employee of the financial institution is deleted, per the 2013 enactment of H.B.2837.

**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 7 Selection of State Depositories for Receipt Accounts

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 7 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)
<b>1. Estimated Total Cost</b>	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
<b>2. Estimated Total Revenues</b>	0.00	0.00	0.00

112 CSR 7 Selection of State Depositories for Receipt Accounts

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*

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2013 JUL 26 PM 4:21

TITLE 112  
LEGISLATIVE RULE  
STATE TREASURER'S OFFICE

SECRETARY OF STATE  
STATE OF WEST VIRGINIA

SERIES 7  
SELECTION OF STATE DEPOSITORIES FOR RECEIPT ACCOUNTS

**§112-7-1. General.**

1.1. Scope. -- This legislative rule establishes the West Virginia State Treasurer's requirements for the selection of depositories for receipt accounts. This rule does not apply to proceeds from the sale of general obligation bonds or bonds issued by the School Building Authority, the Parkways, Economic Development and Tourism Authority, the Housing Development Fund, the Economic Development Authority, the Infrastructure and Jobs Development Council, the Water Development Authority or the Hospital Finance Authority.

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

1.3. Filing Date. -- ~~May 19, 2009~~ \_\_\_\_\_.

1.4. Effective Date. -- ~~June 1, 2009~~ \_\_\_\_\_.

~~1.5. Repeal of former rule. -- This legislative rule repeals and replaces WV 112CSR7 "Selection of State Depositories for Receipt Accounts" filed May 6, 1998 and effective May 7, 1998.~~

**§112-7-2. Definitions.**

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

2.1. "Account Analysis" means a system of compensation by which the Treasurer and ~~an eligible a~~ depository ~~enter enters~~ into a contract that provides for monthly invoices to the Treasurer with detailed account activities billed at the contracted rate, less any earnings, allowances or credits.

2.2. "Agency" means and includes any department, board, commission, division, branch office or other separate unit of state government, and any officer or employee thereof, who or which collect moneys due the state.

2.3. "Collaterally Secured Bond" means a continuous bond payable to the state of West Virginia, conditioned upon the prompt payment, whenever lawfully required, of any

~~state funds, or any part of the funds~~ moneys of an agency. In accordance with W. Va. Code § 31A-4-31, the West Virginia ~~Banking~~ Commissioner of Financial Institutions and the Attorney General must approve the form of the collaterally secured bond. The Treasurer may require increases or decreases in the amount of the bond or replacement by a new bond. Collateral for the bond shall consist of bonds of the United States, bonds or letters of credit of the federal land banks, of the federal home loan banks, or bonds of the state of West Virginia or any county, district or municipality of the State, or other bonds, letters of credit or securities approved by the Treasurer.

2.4. "Compensating Balance" means the cash balance which the Treasurer maintains with a depository to compensate the depository for its services.

2.5. "Deposit Guaranty Bond" means a bond underwritten by an insurance company authorized to do business in this state providing coverage for deposits of state funds that are in excess of the amounts insured by an agency of the federal government.

2.6. "Depository" ~~"Eligible Depository," "Eligible State Depository" or "State Depository"~~ means a ~~state or national bank or a state or federal savings and loan association that meets the criteria of this rule for becoming a depository for the deposit of state funds~~ financial institution insured by an agency of the federal which has posted any required collaterally secured bond and and which is approved by the Treasurer.

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

2.8 "Receipt Accounts" means those accounts in which state funds are deposited.

~~2.9~~ 2.9. "State Funds" means any moneys belonging to or received by the state of West Virginia or any of its agencies, boards and commissions or any moneys for which the state of West Virginia is responsible.

~~2.10~~ 2.10. "Treasurer" means the West Virginia State Treasurer.

~~2.11~~ 2.11. "Valid Bankers' Surety Company" means a bankers' surety company that meets the criteria established by this rule and which the Treasurer has approved as acceptable for insuring ~~an eligible a~~ depository through the issuance of a deposit guaranty bond.

### **§112-7-3. Qualification of Depositories for Receipt Accounts.**

3.1. In order to qualify as ~~an eligible a~~ depository ~~for deposits of state funds~~, a depository shall:

3.1.a. Be a state or national bank or a state or federal savings and loan association registered, operating and doing business in the State of West Virginia;

3.1.b. Be insured by an agency of the federal government;

3.1.c. For deposits of state funds in excess of any amount insured by an agency of the federal government, be insured by:

3.1.c.i. A deposit guaranty bond issued by a valid bankers' surety company acceptable to the Treasurer; and/or

3.1.c.ii. A collaterally secured bond, first approved by the Treasurer, in an amount of not less than Ten Thousand Dollars (\$10,000.00).

3.1.d. Not have on deposit state funds in excess of ninety percent (90%) of the value of collateral pledged on the collaterally secured bond given by the depository. The Treasurer shall determine the value of the collateral; and

3.1. e. Meet all other requirements and provisions of the W.Va. Code.

~~3.2. No depository in this State may serve or be eligible for designation as a state depository if any employee of the Treasurer's office, or a spouse or minor child of that employee, is an officer, director or employee of the depository or owns greater than two percent (2%) of the depository either in his or her own name or beneficially or an interest in the depository.~~

~~3.3. An eligible~~ A state depository for receipt accounts shall submit proposed fee schedules for the types of services rendered by the state depository for receipt accounts, including, but not limited to, services such as wire transfers, checks cashed, returned checks and cash handling. The proposed fee schedules are subject to review and approval by the Treasurer. If the fee schedules are approved by the Treasurer, then the Treasurer may enter into a contract with the ~~eligible~~ state depository for receipt accounts to furnish the required services. If the fee schedules are not approved by the Treasurer, then the Treasurer may negotiate satisfactory revised fee schedules with that state depository for receipt accounts or select another ~~eligible~~ state depository for receipt accounts.

#### **§112-7-4. Valid Bankers' Surety Companies Issuing Deposit Guaranty Bonds.**

4.1. The Treasurer may approve a bankers' surety company as acceptable after receipt and review of a request for approval, receipt of evidence that the surety company has met all of the requirements of this rule, a review of information obtained through an independent investigation of the surety company by the office of the Treasurer, and consideration of any other information the Treasurer considers appropriate.

4.2. Before a state depository may be insured through a deposit guaranty bond, the depository shall first determine that the surety company issuing the bond is a valid bankers' surety company approved as acceptable by the Treasurer. Any depository insured through a deposit guaranty bond issued by a bankers' surety company that is not approved by the Treasurer shall not receive or hold for deposit any state funds.

4.3. Any bankers' surety company that wishes to provide a deposit guaranty bond to ~~an eligible~~ a state depository to insure state funds shall first submit to the Treasurer a written request for approval as a valid bankers' surety company. A surety company shall not issue a deposit guaranty bond to insure state funds on deposit with any ~~eligible~~ state depository without receiving prior written approval from the Treasurer.

4.4. In order to qualify as a valid bankers' surety company, the surety company shall provide to the Treasurer:

4.4.a. Evidence that it is registered to do business in the State of West Virginia and is in good standing with the West Virginia Insurance Commissioner and the West Virginia ~~Banking~~ Commissioner of Financial Institutions;

4.4.b. Evidence that it has at least one current superior rating by a nationally recognized statistical rating service, such as A.M. Best or Moody's;

4.4.c. A statement that it agrees to abide by all applicable laws, rules and requirements of the United States of America and the state of West Virginia, including, but not limited to, those of the West Virginia Insurance Commissioner, the West Virginia ~~Banking~~ Commissioner of Financial Institutions and the West Virginia State Treasurer; and

4.4.d. Its most recent annual report.

4.5. Upon request of the Treasurer, the surety company shall further submit any clarifying or additional information the Treasurer may require for investigation and consideration of the company.

4.6. In considering approval of a bankers' surety company, the Treasurer shall consider all other relevant factors and available information acquired through due diligence that affect a company's viability and capacity to provide valid deposit guaranty bonds to ~~eligible~~ depositories in this state.

4.7. All valid bankers' surety companies shall submit quarterly and annual reports and filings required by the Treasurer, including, but not limited to, statements of financial condition and verification a rating has not changed. Information required from the surety companies may be filed electronically or in any other manner determined by the Treasurer.

4.8. All valid bankers' surety companies are subject to review by the Treasurer's office on a quarterly basis or more frequently if the Treasurer believes it is warranted. If,

after any review, the Treasurer determines that a bankers' surety company no longer meets the Treasurer's requirements, the Treasurer shall rescind the approval of the surety company, immediately notify the surety company and the affected state depository of the rescission of the approval, and take any actions the Treasurer determines necessary in order to protect state funds.

4.9. Any valid bankers' surety company that issued a deposit guaranty bond insuring state funds shall provide the Treasurer at least thirty (30) calendar days advance written notice of intent to amend, cancel or not renew the bond. Any state depository that has notice the surety company may or will amend, cancel or not renew its deposit guaranty bond shall immediately, and in no event in not less than thirty (30) calendar days, notify the Treasurer and forward a copy of any notice received to the Treasurer.

4.10. If a state depository insured through a deposit guaranty bond issued by a valid bankers' surety company becomes insolvent or in any way breaches its contract with the Treasurer and fails to cure the insolvency or breach within five (5) business days, the bankers' surety company shall within three (3) business days of written notice from the Treasurer remit to the state of West Virginia the amount of funds determined by the Treasurer as required to make the state treasury whole.

4.11. The Treasurer may require a state depository to post a collaterally secured bond and pledge securities in lieu of a deposit guaranty bond if the Treasurer believes it necessary to protect state funds.

4.12. A deposit guaranty bond issued by an approved bankers' surety company to insure state funds on deposit with an eligible a state depository may only secure those funds in the custody of the Treasurer.

#### **§112-7-5. Collaterally Secured Bonds.**

5.1. The Treasurer may deposit money with an eligible a depository in excess of the amount insured by an agency of the federal government or through a deposit guaranty bond issued by a valid banker's surety company if the depository provides a collaterally secured bond in the amount of not less than Ten Thousand Dollars (\$10,000).

5.2. The amount of state funds on deposit in any depository in excess of either the amount insured by an agency of the federal government or the amount insured by a deposit guaranty bond issued by a valid bankers surety company may not exceed ninety percent (90%) of the value of collateral pledged on the collaterally secured bond given by the depository.

5.3. The value of the collateral used by an eligible a depository shall be determined by the Treasurer.

5.4. If a state depository insured through a collaterally secured bond or through letters of credit becomes insolvent or in any way breaches its contract with the Treasurer and fails to cure the insolvency or breach within five (5) business days, the holder of the collateral or the obligor for the letters of credit for the depository shall, upon written demand from the Treasurer, within three (3) business days remit to the Treasurer the collateral securing state funds on deposit with the state depository.

#### **§112-7-6. Certificates of Deposit.**

6.1. A state depository is not required to provide a bond or security in lieu of bond if the deposits accepted are placed in certificates of deposit meeting the following requirements:

6.1.a. The funds are invested through a designated state depository selected by the Treasurer;

6.1.b. The selected depository arranges for the deposit of the funds in certificates of deposit in one or more banks or savings and loan associations wherever located in the United States, for the account of the state;

6.1.c. The full amount of principal and accrued interest of each certificate of deposit is insured by the Federal Deposit Insurance Corporation;

6.1.d. The selected depository acts as custodian for the state's account; and

6.1.e. At the same time that the state funds are deposited and the certificates of deposit are issued, the selected depository receives an amount of deposits from customers of other financial institutions wherever located in the United States equal to or greater than the amount of the funds invested by the state through the selected depository.

#### **§112-7-7. Selection Procedures.**

7.1. Each agency collecting moneys for deposit in the state treasury shall notify the Treasurer of its anticipated collections and deposits, including the extent of the activity in its accounts, size of its accounts, frequency of deposits, special services that may be needed, and other information requested by the Treasurer. The agency may submit its preferred choice or a list of preferred choices of state depositories for receipt accounts to the Treasurer. If the agency submits a preferred choice or list, it shall also submit a statement of the reasons for its preference. However, the Treasurer is not required to select a state depository preferred by an agency.

7.2. The Treasurer shall review the information submitted and consider:

7.2.a. The activity of the various accounts;

7.2.b. The reasonable value of the banking services to be rendered;

7.2.c. The value and importance of the deposits to the economy of the communities and the various areas of the state affected; and

7.2.d. The proposed fee schedule of the recommended depository, as required by Subsection 8.1 of this rule.

### **§112-7-8. Compensation.**

8.1. Method of Compensation - ~~An eligible state~~ A depository for receipt accounts shall enter into an agreement for services with the Treasurer. The agreement shall provide that the ~~eligible~~ depository may be compensated for its services by any one of the following methods:

8.1.a. Compensating Balance: The compensating balance shall be negotiated by the Treasurer and the ~~eligible~~ depository and shall be based, in part, on the anticipated activity expected at the depository. The compensating balance left in the Treasurer's accounts shall offset fees. The compensating balance agreement is subject to periodic review by the Treasurer and re-negotiation or adjustment, as the Treasurer determines; or

8.1.b. Account Analysis: The ~~eligible~~ depository shall submit to the Treasurer a monthly invoice. The invoice shall reflect the total amount of actual activity for the period billed at the rates established in its agreement with the Treasurer, less any earnings, allowances or credits to which the Treasurer may be entitled, and any other information required by the Treasurer. Additional information may include, without limitation, current monthly average balances, service descriptions, earnings allowance rates, and a summary of balances and charges. The Treasurer shall pay the invoices with a state check or through an electronic funds transaction.

8.2. Compensation for Ancillary Services - The Treasurer may, from time to time, require a depository to furnish certain ancillary services in the course of providing the receipt account services for which it was selected. The Treasurer shall compensate the depository by one of the methods in subsection 8.1 of this rule.

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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:

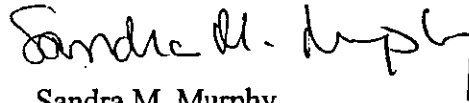
- Section 2.6, should be amended to read: "Depository" or "State Depository" means a financial institution insured by an agency of the federal *government*, which has posted any required collaterally secured bond and *which is* approved by the Treasurer." (emphasis added to show change.)

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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FAX: 304-558-4097  
www.wvtreasury.com

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

Sandra M. Murphy, Esq.  
July 26, 2013  
Page two

OFFICE OF THE STATE TREASURER

- 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,



Diana Stout  
General Counsel

DS/wh

C: Treasurer John Perdue

## 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

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**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

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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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July 26, 2013

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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.