



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

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

AGENCY: Treasurer TITLE-SERIES: 112-13
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 112-13 Procedures for Providing Services to Political Subdivisions

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: §12-3A-6

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

§12-3A-6 provides authority for the State Treasurer to promulgate this legislative rule and to establish a mechanism by which political subdivisions may request an exemption from the requirements of the section.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/25/2021

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/26/2021

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

The proposed rule adds the procedures by which political subdivisions may apply to the State Treasurer's Office for an exemption to offer an online payment system. Additionally, the rule makes technical formatting changes to conform with updated standards.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

Updates to this rule are due to the passage of SB 280 during the 2021 Regular Session.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

None

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

None

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

None

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/A

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

James G Fuerhoff -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 112
LEGISLATIVE RULE
STATE TREASURER'S OFFICE

SERIES 13
PROCEDURES FOR PROVIDING SERVICES TO POLITICAL SUBDIVISIONS

§112-13-1. General.

1.1. Scope. -- This rule establishes the procedures for the State Treasurer's Office to provide services to political subdivisions.

1.2. Authority. – W. Va. Code §12-3A-6.

1.3. Filing Date. – ~~May 1, 2017.~~

1.4. Effective Date. – ~~June 1, 2017.~~

1.5. Sunset Provision. – This rule shall terminate and have no further force or effect on ~~June 1, 2022~~ August 1, 2027.

§112-13-2. Definitions.

2.1. "ACH" means automated clearinghouse, a national EFT network which enables participating Financial Institutions to distribute electronic credit and debit entries to financial institution accounts and to settle the entries.

2.2. "Card Issuer" means a financial institution or other business issuing a charge, credit, or debit card.

2.3. "Charge card" means a card (usually plastic) issued for the purpose of obtaining money, property, or services on credit, with the full balance due at the end of each statement period.

2.4. "Convenience fee" means a fixed rate charge assessed to a charge, credit, or debit card or electronic payment to help defray the cost of processing a transaction.

2.5. "Credit card" means a card issued for the purpose of obtaining money, property, or services on credit with the full balance or minimum payments due at the end of each statement period. Interest is assessed on the unpaid balance.

2.6. "Customer" means any person or entity purchasing from a political subdivision.

2.7. "Debit card" means a card issued for the purpose of obtaining money, property, or services with the amount charged directly to the holder's financial institution account.

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2.8. "Discount fee" means the charges assessed to the merchant on the total sale by charge, credit, or debit card by a card issuer for accepting its card.

2.9. "Electronic Commerce" means the processing of transactions by electronic techniques, including, but not limited to, the telephone, IVR, POS terminal, internet, electronic payment, virtual terminal, and online transaction processing.

2.10. "EFT" means electronic funds transfer.

2.11. "Electronic payment" means an EFT, including, but not limited to, payment by ACH, ACH based electronic check, wire transfer, and online transaction processing.

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

2.13. "Internet" means the computer-based global information system linking computer networks all over the world by the use of internet protocol suite (TCP/IP).

2.14. "IVR" means a telephone interactive voice response system.

2.15. "Lockbox services" means the process by which payments and remittance forms are mailed to a post office box, retrieved, and processed, and by which the moneys are then deposited into a financial institution account.

2.16. "Merchant" means any political subdivision accepting payments by charge, credit, or debit cards.

2.17. "Political subdivision" means a county, municipality, board of education, RESA, corporation, or instrumentality of one or more counties or municipalities, and any other government organization.

2.18. "Point of sale terminal" or "POS terminal" means a device used for the primary purposes of transferring moneys to or from a financial institution account or segregating moneys in accounts within a financial institution, or both, for transactions, including, without limitation, devices used to implement and facilitate check guarantee and check authorization.

2.19. "RESA" means a West Virginia regional education service agency authorized in W. Va. Code §18-2-5b.

2.20. "Service Fee" means a fixed or variable rate charge assessed to a charge, credit, or debit card or electronic payment to help defray the cost of processing a transaction.

2.21. "Services" include, without limitation, charge, credit, and debit card approval and clearing; EFT; internet ACH debit; lockbox services; POS activity; ACH batch processing; website development; website hosting; database management; remote data capture; and consulting.

2.22. "STO" means the West Virginia State Treasurer's Office.

2.23. "Transaction" means one purchase or payment.

2.24. "Treasurer" means the West Virginia State Treasurer or his or her designee from the Treasurer's office.

2.25. "Virtual Terminal" means a web-browser based access to an acquirer, processor, or third-party service provider website to authorize payment card transactions where the merchant manually enters payment card data via a securely connected web browser. Unlike physical terminals, virtual terminals do not read data directly from a payment card.

2.26. "Wire transfer" means a type of EFT in which a bank to bank transaction occurs in real time.

§112-13-3. Political Subdivisions Using Treasurer's Services.

3.1. Political subdivisions may request to use the Services offered by or agreements made available by the Treasurer.

3.2. A political subdivision shall complete the application and any documents provided by the Treasurer.

3.3. An authorized signatory of the political subdivision shall sign the agreement, application, and any other documents required by the Treasurer.

3.4. The Treasurer shall review each submitted request and application.

3.5. If a request or application is not complete or timely, or if the Treasurer is not able to provide the requested services, the Treasurer may reject the request or application.

3.6. The Treasurer shall provide an explanation of the reasons for rejection of a request or application.

3.7. If the Treasurer determines alternative services to the services requested by the political subdivision may be better suited to the activity, the Treasurer shall inform the political subdivision of the alternative services. The Treasurer shall provide only the services selected by the political subdivision.

§112-13-4. Duties of Political Subdivisions.

4.1. Political subdivisions shall acquire any goods or services necessary for the Treasurer to provide services.

4.2. For Internet transactions, the political subdivision website shall contain information required by the Treasurer.

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4.3. Political subdivisions using the services of the Treasurer shall agree to maintain security and confidentiality standards that at a minimum comply with standards established by the Treasurer.

4.4. Political subdivisions are responsible for all discount and other fees and amounts assessed or charged in connection with the services.

4.5. Each political subdivision shall establish procedures to reconcile transactions processed with the amounts the Treasurer deposits into the account designated by the political subdivision.

4.6. Political subdivisions using the services of the Treasurer shall comply with all regulations, certifications, and other matters required with the acceptance of charge, credit, or debit cards.

§112-13-5. Treasurer's Duties.

5.1. The Treasurer shall:

~~5.1.a.~~ 5.1.1. Determine which, if any, of the services it may provide;

~~5.1.b.~~ 5.1.2. Determine the documents and the terms and conditions of any agreement a political subdivision shall sign;

~~5.1.c.~~ 5.1.3. Provide the training and assistance needed for a political subdivision to use the services;

~~5.1.d.~~ 5.1.4. Obtain merchant account numbers for political subdivisions authorized to use the services;

~~5.1.e.~~ 5.1.5. Test the acceptance process prior to implementing the services; and

~~5.1.f.~~ 5.1.6. Transfer by ACH all the moneys approved for a political subdivision into a financial institution account or an investment account designated by the political subdivision.

5.2. The Treasurer may, at any time, assess or require the assessment of the system security of the political subdivision and how confidential information is managed.

§112-13-6. Convenience Fees or Service Fees.

6.1. A political subdivision using the services of the Treasurer may require customers using its website to pay a convenience fee or service fee, unless the fee is prohibited by law.

6.2. The Treasurer shall set the amount of the convenience fees and service fees authorized.

6.3. The use of convenience fees or service fees shall follow the merchant rules or regulations established by card brands.

§112-13-7. Political Subdivision Financial Electronic Commerce Requirement and Exemption Criteria

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7.1. On or before March 1, 2023, every political subdivision must offer a system, with an online presence for acceptance of payments through the STO, in accordance with specifications above or through an outside entity.

7.2. A political subdivision may seek an exemption from the requirement to offer the system described in section 7.1. Criteria for granting an exemption is established according to Treasurer's Office internal procedures and the determination of whether to grant an exemption will be based on the information a political subdivision includes in an exemption request.

7.3. To request an exemption, a political subdivision must submit a written exemption request to the Treasurer. The following information must be included in an exemption request:

7.3.1. The types and annual totals of state revenue collected by the political subdivision;

7.3.2. The types and annual totals of any other revenue collected by the political subdivision; and

7.3.3. Information regarding the political subdivision's business operations, as requested by the STO.

7.4. Upon receipt of the exemption request, the Treasurer will approve or deny the exemption request in accordance with internal metrics, policies, and procedures. The Treasurer has the exclusive authority to grant or deny an exemption.

7.4.1. A political subdivision shall immediately report any significant change in the information included in an approved exemption request to the Treasurer.

7.4.2. The STO may reevaluate an exemption request or withdraw an exemption based on a report received pursuant to subsection 7.4.1.