



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

11/2/2023 1:00:20 PM

Office of West Virginia  
Secretary Of State

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## **NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

AGENCY: Treasurer

RULE TYPE: Legislative

TITLE-SERIES: 112-20

RULE NAME: Jumpstart Savings Program

CITE AUTHORITY: §18-30A-6, §18-30A-16

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

**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 20  
JUMPSTART SAVINGS PROGRAM**

**§112-20-1. General.**

1.1. Scope. – This rule provides the administrative requirements of the Jumpstart Savings Program.

1.2. Authority. – W. Va. Code §18-30A-6; §18-30A-16.

1.3. Filing Date. – ~~March 31, 2023~~

1.4. Effective Date. – ~~March 31, 2023~~

1.5. Sunset Provision. – This rule shall terminate and have no further force or effect on August 1, 2028~~9~~.

**§112-20-2. Definitions.**

2.1. “Account” means a Jumpstart Savings Program account, established pursuant to W. Va. Code §18-30A-1 *et seq.* and this rule. Any investment account issued by the board or the trust constitutes an interest in the Jumpstart Savings Program Trust and, for securities law purposes, is classified as a municipal fund security issued by the trust.

2.2. “Account owner” means the individual who establishes and owns an account and who is authorized to receive distributions, designate a beneficiary, select investment options, if applicable, and be eligible to receive any and all necessary state or federal tax documentation, according to W. Va. Code §18-30A-1 *et seq.* and this rule.

2.3. “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.

2.4. “Board” means the Board of Trustees of the West Virginia College and Jumpstart Savings Programs, established in W. Va. Code §18-30-4. The term “board” shall also include the program manager or designee when referring to such tasks and duties delegated by the board.

2.5. “Cash” includes checks, money orders, wire transfers, or EFTs, but does not include currency.

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2.6. “Contribution” means any payment directly allocated to an account for the benefit of a designated beneficiary or that is used to pay administrative or other fees associated with the account according to the procedures established by the board.

2.7. “Designated beneficiary” means the individual designated as a beneficiary at the time an account is established, or the individual designated as the beneficiary when the beneficiary is changed, according to the requirements of W. Va. Code §18-30A-1 *et seq.* and this rule.

2.8. “EFT” means electronic funds transfer through wire transfers, ACH, online transaction processing, payroll deduction, automatic contribution plans, or similar methods.

2.9. “Jumpstart Savings Program” or “program” means the Jumpstart Savings Program, established in W. Va. Code §18-30A-1 *et seq.*

2.10. “Jumpstart Savings Program Trust” or “trust” means the Jumpstart Savings Program Trust created in W. Va. Code §18-30A-8.

2.11. “Jumpstart Savings Website” or “website” means the program website and/or account owner portal where account owners can access and transact on their accounts, as well as obtain program information, program documents, and program forms.

2.12. “Immediate family,” as used to describe an individual’s relationship to another individual, has the meaning provided in W. Va. Code §18-30A-3 and includes any of the following:

2.12.1. The spouse of the designated beneficiary;

2.12.2. A child of the designated beneficiary or a descendant of the designated beneficiary’s child;

2.12.3. A brother, sister, stepbrother, or stepsister of the designated beneficiary;

2.12.4. The father or mother of the designated beneficiary, or an ancestor of either;

2.12.5. A first cousin of the designated beneficiary;

2.12.6. A stepfather or stepmother of the designated beneficiary;

2.12.7. A son or daughter of a brother or sister of the designated beneficiary;

2.12.8. A brother or sister of the father or mother of the designated beneficiary;

2.12.9. A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the designated beneficiary; or

2.12.10. The spouse of any person described in this section 2.12.

2.12.11. Any term set forth in this rule means and includes such term as established through a lawful adoption, including, but not limited to, adoptions of a child or children, or other individual, by an individual or individuals who are not the father, mother, or stepparent of the child or person.

2.13. "Individual" means a natural person and includes an individual acting as the individual's legal representative (for example, in his or her capacity as custodian of a trust established for the benefit of a natural person).

2.14. "Labor organization" means any organization, agency, association, union, or employee representation committee of any kind that exists, in whole or in part, to assist employees in negotiating with employers concerning grievances, labor disputes, wages, rates of pay, or other terms or conditions of employment.

2.15. "Non-qualified distribution" means any distribution of funds from an account that is not a qualified distribution for the purposes of W. Va. Code §11-21-12m and §18-30A-3(a)(11).

2.16. "Person" includes an individual, a trust, estate, partnership, association, company, or corporation.

2.17. "Program description and participation agreement" means the contract between an account owner and the board setting forth the terms and conditions under which the account owner participates in the program.

2.18. "Program manager" means the entity the board selects and designates to serve as the administrator of the program or a substantial function of the program, and to undertake any other program duties specified by the board.

2.19. "Qualified distribution" means any distribution of funds from an account, pursuant to a distribution request from the account owner, that is used to pay for qualified expenses.

2.20. "Qualified expenses" includes any expense treated as a qualified expense under W. Va. Code §18-30A-3(a)(11) and this rule.

2.21. "Qualifying ~~occupation, profession, or trade~~" means an occupation or profession for which the designated beneficiary is required to:

2.21.1. Complete an apprenticeship program registered and certified with the United States Department of Labor, as provided in 29 U.S.C. §50;

2.21.2. Complete an apprenticeship program required by any provision of the West Virginia Code or a legislative rule promulgated pursuant to said Code;

2.21.3. Earn an Associate degree or certification from a community and technical college or from a school or program, authorized by the West Virginia Council for Community or Technical College Education or a similar agency in another state, to award associates degrees or technical certifications; ~~or~~

2.21.4. Earn a license or certification from an Advanced Career Education (ACE) career center;

2.21.5. Earn a license or certification from a career and technical education or vocational training program at a public secondary school; or

2.21.6. Complete any other apprenticeship or educational program consistent with the purposes of this article, as approved by the board.

2.22. “Rollover contribution” means the transfer of all or part of an account from a SMART529 College Savings account to a Jumpstart Savings account or from a Jumpstart Savings account to a West Virginia ABLE account, pursuant to and in accordance with the requirements of W. Va. Code §11-21-12m.

2.23. “SMART529” refers to the college savings program and plan established in W. Va. Code §18-30-1 *et seq.*

2.24. “State Treasurer” means the West Virginia State Treasurer or his or her designee.

2.25. “West Virginia ABLE” means the program and plan established in W. Va. Code §16-48-1 *et seq.*

**§112-20-3. The Jumpstart Savings Program Trust; securities laws; taxation.**

3.1. The Jumpstart Savings Program Trust is a public instrumentality of the State of West Virginia. All interests issued by said trust shall constitute interests in the trust and shall be made available to eligible members of the public. For securities law purposes, an interest in the Jumpstart Savings Program Trust, other than an interest in an FDIC-insured account, is a municipal fund security.

3.2. The board shall take any action necessary to administer the program in a manner that allows the trust to qualify and remain qualified for relevant federal securities law exemptions for public instrumentalities of a state.

3.3. The board shall take any action necessary to administer the program in a manner that allows the trust to be exempt and remain exempt from registration under the securities laws of the West Virginia Code, including Chapter 32, the “Uniform Securities Act,” and any other West Virginia securities laws existing now or in the future.

3.4. The board shall file all tax returns on behalf of the trust required by federal or state law, if any. To the extent permitted by law, the board shall claim any tax deductions available to the board to avoid double taxation of any trust fund earnings and recapture taxes paid on behalf of the trust on earnings later distributed to trust beneficiaries. The board shall file any information returns with regard to account owners as may be required by federal or state law.

3.5. The board may adopt any reinvestment strategy, if applicable, permitted by state and federal law that is necessary to minimize the tax liability, if any, of the trust fund and account owners.

**§112-20-4. Account owner eligibility.**

4.1. Any individual who is legally able to contract under applicable state law is eligible to establish an account.

**§112-20-5. Opening an account.**

5.1. To open a Jumpstart Savings account, the account owner must:

5.1.1. Provide all information and forms required by the board;

5.1.2. Make a minimum opening deposit as required by the board and available on the website: <https://wvjumpstart.com> of \$25; and

5.1.3. Name a single individual as the designated beneficiary according to the requirements of section 8 of this rule.

5.2. All forms required to open and make deposits to a Jumpstart Savings account will be available on the website: <https://wvjumpstart.com>.

**§112-20-6. Ignite Incentive Program**

6.1. The program described in this section shall be known as the “Ignite Incentive Program.” The State Treasurer will deposit \$100 from the Jumpstart Savings Expense Fund into a newly opened Jumpstart Savings account if the designated beneficiary is a resident of West Virginia, and either of the following criteria are met:

6.1.1. The account is opened when the designated beneficiary is under 18 years of age; or

6.1.2. The account is opened within the 180 days following the date of the designated beneficiary’s enrollment in an apprenticeship or educational program described in 2.21.1. through 2.21.46. of this rule.

6.2. To qualify for the \$100 deposit described in this section, the account owner must provide all information to the board or program manager within 30 days of completion of a Jumpstart account application, as required by the board. All information required to qualify for said deposit will be available on the website.

6.3. An individual may be the designated beneficiary for an account that receives the \$100 deposit described in this section only one time during said individual’s lifetime, regardless of the number of accounts for which an individual is named as designated beneficiary.

**§112-20-7. Refusal of application to open Account.**

7.1. The board may refuse to open an account for any of the following reasons:

7.1.1. The applicant is not an eligible account owner;

7.1.2. The applicant has not provided all the information required in the application;

7.1.3. The applicant has failed to execute the participation agreement, or any other instrument required by the board;

7.1.4. The applicant has failed to complete the minimum account opening deposit as required by the board ~~of \$25.00~~;

7.1.5. The execution of a participation agreement violates any federal or state law; or

7.1.6. The board determines that the applicant has intentionally provided false information to the board or has violated any applicable state or federal law related to a savings or investment program currently or previously administered by the state.

7.2. The board shall provide written notice to an applicant of refusal to open an account and the reason for said refusal. If the applicant provides additional information credibly refuting the basis for the application refusal, the board shall reconsider the application.

**§112-20-8. Designated beneficiary.**

8.1. Any individual regardless of age, residency, or relationship to the account owner, including the account owner himself or herself, may be a designated beneficiary under the program.

8.2. There shall be only one designated beneficiary per account.

8.3. Any number of accounts may be opened for a single designated beneficiary. An account owner may not be the account owner for multiple accounts with the same designated beneficiary.

8.4. A designated beneficiary must be an individual and may not be a business, corporation, enterprise, or other entity that is not a natural person.

**§112-20-9. Changing Designated Beneficiaries.**

9.1. An account owner may change the designated beneficiary of the account, as permitted by W. Va. Code §18-30A-11(b).

9.2. Only an account owner may change the designated beneficiary of an account. The new designated beneficiary must be a member of the prior designated beneficiary's immediate family.

9.3. To change a designated beneficiary, the account owner shall provide all information to the board or program manager, as required by the board.

9.4. Upon receipt of the written request, the board shall register the information regarding the newly designated beneficiary in the records of the program. The change of the designated beneficiary shall be effective upon registration.

9.5. For state law purposes, a change in the designated beneficiary of a Jumpstart Savings account is not a distribution so long as the new designated beneficiary is a member of the prior designated beneficiary's immediate family, as required by this rule.

9.6. Any forms necessary for the changing of designated beneficiaries will be available on the website.

**§112-20-10. Change of account ownership.**

10.1. An account owner may designate a successor who shall become the new account owner automatically upon the death of the account owner.

10.1.1. This designation may be made at any time prior to the death of the designated account owner by submitting a designation of the successor to the program manager containing the information set forth in the account change request form.

10.1.2. Designation of a successor shall be effective upon registration in the records of the program manager.

10.2. If a change in the ownership of an account is required by a court order directing such change, or by an affidavit or declaration that is recognized under applicable law as requiring transfer of ownership without a court order, such change unless otherwise required by law shall be registered in the records of the program manager promptly after receipt of such information.

10.3. Transfer of ownership shall not be effective until registered in the records of the program manager.

10.4. Any forms necessary to transfer account ownership will be available on the website: <https://wvjumpstart.com>.

**§112-20-11. Termination of Account.**

11.1. An account owner may terminate an account at any time by submitting an account termination request to the board, via any method made available by the board on the website: <https://wvjumpstart.com>.

11.2. If the board receives credible evidence that an account owner or a designated beneficiary has provided false or misleading information to the board, or to a state or federal tax authority related to an account, the board may suspend an account pending an investigation. The board shall

consider any credible information provided by the account owner to refute the evidence leading to suspension of the account. The board shall provide written notice of any suspension and the reason for the suspension to an account owner as soon as reasonably practicable.

11.3. If the board receives credible evidence that an account has been used in connection with fraud or inappropriate activity, or in connection with a violation of any laws or any rules or standards of the program, the board may suspend such account pending an investigation. The board shall consider any credible information provided by the account owner to refute the evidence leading to suspension of the account. The board shall provide written notice of any suspension and the reason for the suspension to an account owner as soon as reasonably practicable.

11.4. If the board determines that an account owner or designated beneficiary has provided false or misleading information to the board, or to a state or federal tax authority related to an account, or if the board determines that an account has been used in connection with fraud or inappropriate activity, or in connection with a violation of any laws or any rules or standards of the program, the board may terminate the account. The board shall provide written notice of the decision to terminate an account to the account owner as soon as reasonably practicable.

11.5. The board may terminate an account in accordance with the provisions of the program description and participation agreement if the account balance drops below a point at which there are insufficient funds to cover appropriate account fees or are below a level determined by the board.

11.6. Upon termination of an account, the remaining account balance will be distributed to the account owner, and the contributions and earnings thereon may be subject to federal and state income taxation according to applicable laws. Neither the program, nor the board nor the program manager, nor the board's other designee(s) shall be subject to liability for any federal or state income taxes or penalties imposed on an account owner as a result of a distribution.

11.7. The Board may develop standards and procedures to limit the number of accounts an account owner may open or the number of times an account owner or beneficiary may participate in any incentive program or programs in order to prevent duplication of program benefits, misuse of funds, or fraud.

**§112-20-12. Fees.**

12.1. The board may charge account owners a fee for the administrative expenses of the program. Fees shall be clearly identified in the program description that accompanies the participation agreement and available on the website: <https://wvjumpstart.com>.

**§112-20-13. Investment policies.**

13.1. The board may establish investment policies for the monies in the Jumpstart Savings Trust Fund, if applicable, to the nature of accounts in the program. The board may review and modify the investment policies from time-to-time as the board, in its sole discretion, determines.

13.2. The program may include interest-bearing only savings accounts and/or investment accounts to account owners. Any interest-bearing only savings accounts made available to account owners must be insured by the Federal Deposit Insurance Corporation.

13.3. Taxation of any investment returns or interest earnings are governed by applicable federal and state law. Account owners should consult with their own federal tax advisor concerning any potential tax implications of interest or earnings accruing to their Jumpstart Savings account.

13.4. Any changes to the investment policies shall apply prospectively.

13.5. If an account requires investment direction, investment direction by the account owner or designated beneficiary of an account is prohibited. Nothing in this section prohibits the program manager from offering a limited menu of portfolio options to all account owners based on risk-tolerance and potential for growth and permitting an account owner to change his or her portfolio option up to two times per year.

#### **§112-20-14. Contributions.**

14.1. Any person may make a contribution to a Jumpstart Savings account after the account is opened, subject to applicable state and federal laws. Contributions shall be made only in cash.

14.2. Rollover Contributions.

14.2.1. Any portion of a SMART529 distribution that is deposited into a Jumpstart Savings account within 30 days of receipt of the SMART529 account distribution, is a rollover contribution to the Jumpstart Savings account and is eligible for the state tax decreasing modification according to W. Va. Code §11-21-12m(ed) to the extent the distribution amount is not allowable as a deduction when arriving at the account owner's federal adjusted gross income. Nothing in this rule governs or addresses the treatment of any such rollover contribution for federal tax purposes and the SMART529 distribution may be subject to federal tax liability and penalties.

14.2.2. Any portion of a Jumpstart Savings account distribution that is deposited into a West Virginia ABLE account within 30 days of receipt of the Jumpstart Savings account distribution, is a rollover contribution and is eligible for the state tax decreasing modification according to W. Va. Code §11-21-12m(ed) to the extent the distribution amount is not allowable as a deduction when arriving at the account owner's federal adjusted gross income. Nothing in this rule governs or addresses the treatment of any such rollover contribution for federal tax purposes and the Jumpstart distribution may be subject to federal tax liability and penalties.

14.2.3. When making a rollover contribution, the account owner shall complete the forms and make such disclosures of financial information as required by the board.

14.2.4. Account owners should consult with their own federal tax advisor concerning any potential rollover of a SMART529 or West Virginia ABLE account into a Jumpstart Savings account prior to any such rollover.

14.3. Matching Contributions. –

14.3.1. When making a matching contribution to qualify for the tax credit provided in W. Va. Code §11-21-25 or §11-24-10a, the contributing employer and the owner of the account receiving the matching contribution shall submit all information required by the board on a form provided by the board.

14.3.2. An employer may not claim the credit for a matching contribution provided in section 14.3. to an Account of which he or she is the Account Owner or Designated Beneficiary.

14.3.3. Employers should consult with their own federal tax advisor and/or legal counsel concerning any potential tax implications or other legal implications of making a matching contribution to a Jumpstart Savings account.

14.4. Any forms necessary to make a contribution, a rollover contribution, or an employer matching contribution will be made available on the website: <https://wvjumpstart.com>.

**§112-20-15. Distributions**

15.1. Only the account owner may authorize and receive a distribution of funds (whether for a qualified expense, a non-qualified expense, or otherwise) from an account. A designated beneficiary may not authorize distribution or withdrawal of account funds unless he or she is also the account owner.

15.2. An account owner may request a distribution of funds by submitting a distribution request to the board via any method made available by the board (*e.g.*, online or paper form). Upon receipt, the program manager shall commence processing properly submitted distribution requests as soon as reasonably practicable.

15.3. A change in the designated beneficiary of a Jumpstart Savings account is not a distribution for the purposes of this article or W. Va. Code §11-21-1 *et seq.* if the new designated beneficiary is a member of the prior designated beneficiary's immediate family.

**§112-20-16. Qualified Expenses.**

16.1. The amount of any distribution that is used to pay for a qualified expense of the account's designated beneficiary establishes the account owner's entitlement to the personal income tax decreasing modification authorized by W. Va. Code §11-21-12m(b) to the extent the distribution amount is not allowable as a deduction when arriving at the account owner's federal adjusted gross income. An account owner is responsible for maintaining documentation of qualified expenditures needed for state tax reporting or in the case of a state tax audit. The board will not collect or maintain documentation of an account owner's expenditures of moneys distributed to the account owner from a Jumpstart Savings account: *Provided*, That the board may request information on the use of distribution monies for the purpose of collecting program data.

16.2. The amount of any distribution that is used for qualified expenses is considered a qualified distribution. For the purposes of this article and W. Va. Code §11-21-12m and this rule, a qualified expense expenditures of distributions for the following purposes are qualified expenses: includes an account distribution, or any amount thereof, expended by an account beneficiary in the taxable year of receipt of the distribution or the next succeeding taxable year that:

16.2.1. Is allowable as a federal personal income tax deduction pursuant to 26 U.S.C. § 162, as an ordinary and necessary business expense, and is incurred in carrying on a qualifying profession;

16.2.2. Is allowable as a federal personal income tax deduction pursuant to 26 U.S.C. § 195(b), as a business start-up expenditure, and is incurred in carrying on a qualifying profession;  
or

16.2.3. Is expended for goods, services, or other expenses that qualify for a federal personal income tax deduction for depreciation or amortization over time, pursuant to a provision of 26 U.S.C. § 161-199a and that are used to carry on a qualifying profession; or

16.2.4. Is not allowable as any one of the federal personal income tax deductions described in subdivisions 16.2.1. through 16.2.3. of this subsection and is expended for:

16.2.4.a. The purchase of tools, equipment, or supplies used exclusively in a qualifying profession;

16.2.4.b. Costs to establish a business in this state to practice a qualifying profession;  
or

16.2.4.c. Fees for required certification or licensure in a qualifying profession; Provided, That in no event shall any dues, fees, subscriptions, or any other payments to a labor organization constitute qualified expenses for the purposes of this article; and

16.2.4.d. Is not reimbursed by the taxpayer's employer.

~~16.2.1. The purchase of tools, equipment, or supplies by the designated beneficiary to be used exclusively in a qualifying occupation, profession, or trade. The types of tools, equipment or supplies will vary depending on the qualifying occupation, profession, or trade of the designated beneficiary. Examples of purchases that could be qualified expenses include, but are not limited to, the purchase of hammers, wrenches, saws, screwdrivers, air compressors, concrete mixers, nail guns, or other necessary tools, equipment, or supplies to be used in a qualifying occupation, profession, or trade. Vehicles that are used exclusively in the qualifying occupation, profession, or trade are considered to be equipment.~~

~~16.2.2. Fees for required certification and licensure to practice a qualifying occupation, profession, or trade. The types of certifications and licensures to practice a qualifying occupation, profession, or trade will vary depending on the qualifying occupation, profession, or trade.~~

~~Examples of such fees that could be qualified expenses include, but are not limited to, fees for Occupational Safety and Health Administration (OSHA) certifications, a Commercial Driver's License (CDL), or a Cardiopulmonary Resuscitation (CPR) certification necessary for a qualifying occupation, profession, or trade.~~

~~16.2.3. Costs incurred by the designated beneficiary that are necessary to establish a business in this state in which the beneficiary will practice a qualifying occupation, profession, or trade when the costs are exclusively incurred and paid for the purpose of establishing and operating such business. The types of costs to establish a business will vary depending on the qualifying occupation, profession, or trade. Examples of costs that could be qualified expenses include, but are not limited to, the cost of office space; insurance; fees for legal, professional, and accounting services; inventory; advertising and marketing materials; employee salaries; or other necessary costs to establish a business in West Virginia in which the designated beneficiary will practice a qualifying occupation, profession, or trade.~~

~~16.3. Any other expenditure approved as a qualified expense by the board.~~

16.43. A distribution of funds from an account for any use other than qualified expenses for the designated beneficiary constitutes a non-qualified distribution and is not eligible for the state tax benefits provided in W. Va. Code §11-21-12m and is subject to an increasing modification for distributions not used for qualified expenses pursuant to W.Va. Code §11-21-12m(c). Any expense that does not meet the definition of qualified expense provided in section 16.2. of this rule is a non-qualified expense. Examples of non-qualified expenses include, but are not limited to, dues, fees, subscriptions, or any other payments to a labor organization; bad debt expenses; campaign donations; lobbying expenses; payment of federal or state property, income, or corporate taxes; payment of civil or criminal fines; the purchase of tools, equipment, or supplies for personal use; or costs to establish a business with its principal place of business located outside of the State of West Virginia.

### **§112-20-17. Separate Accounting.**

17.1. Separate records and accounting shall be maintained for each account established under the program.

17.2. The board or its identified program manager shall prepare an annual summary of information on the financial condition of the Jumpstart Savings Trust Fund.

17.3. The board or its identified program manager shall provide quarterly account statements to account owners.

17.4. The board shall comply with all internal and external audit requirements set forth in W. Va. Code §18-30A-1 *et seq.* The board shall make an annual summary on the financial condition of the College and Jumpstart Savings Administrative Account available on the website: <https://wvjumpstart.com>.

### **§112-20-18. Confidentiality.**

18.1. Individual account information, including, but not limited to, names, addresses, telephone numbers, personal identification information, amounts contributed and earnings on amounts contributed, shall be maintained as confidential, and may be disclosed only as needed to administer the program consistent with W. Va. Code §18-30A-1 *et seq.* or other applicable state and federal laws, or unless the person providing the information, or who is the subject of the information, executes and delivers to the board his or her written consent to disclosure.