WEST VIRGINIA CODE: §16-48-5

§16-48-5. Use of financial organizations as program depositories and managers.

(a) The Treasurer may implement the program through use of financial organizations as account depositories and managers. The Treasurer may solicit proposals from financial organizations to act as depositories and managers of the program. Financial organizations submitting proposals shall describe the investment instruments which will be held in accounts. The Treasurer may select more than one financial organization and investment instrument for the program. The Treasurer shall select financial organizations to act as program depositories and managers from among the bidding financial organizations that demonstrate the most advantageous combination, both to potential program participants and this state of the following criteria:

(1) The financial stability and integrity of the financial organization;

(2) The safety of the investment instrument being offered;

(3) The ability of the financial organization to satisfy recordkeeping and reporting requirements;

(4) The financial organization's plan for promoting the program and the investment the organization is willing to make to promote the program;

(5) The fees, if any, proposed to be charged to the account owners;

(6) The minimum initial deposit and minimum contributions that the financial organization will require;

(7) The ability of the financial organization to accept electronic withdrawals, including payroll deduction plans; and

(8) Other benefits to the state or its residents included in the proposal, including fees payable to the state to cover expenses of operation of the program.

(b) The Treasurer may enter into any contracts with a financial organization necessary to effectuate the provisions of this article. Any management contract shall include, at a minimum, terms requiring the financial organization to:

(1) Take any action required to keep the program in compliance with requirements of this article and any actions not contrary to its contract to manage the program to qualify as a "qualified ABLE program" as defined in Section 529a of the federal Internal Revenue Code of 1986, as amended;

(2) Keep adequate records of each account, keep each account segregated from each other

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account and provide the Treasurer with the information necessary to prepare the statements required by section six of this article, and amendments thereto;

(3) Compile and total information contained in statements required to be prepared under section six of this article, and amendments thereto, and provide such compilations to the Treasurer;

(4) If there is more than one program manager, provide the Treasurer with such information as is necessary to determine compliance with section six of this article;

(5) Provide the Treasurer with access to the books and records of the program manager to the extent needed to determine compliance with the contract, this article and Section 529a of the federal Internal Revenue Code of 1986, as amended;

(6) Hold all accounts for the benefit of the account owner or owners;

(7) Be audited at least annually by a firm of certified public accountants selected by the program manager and provide the results of such audit to the Treasurer;

(8) Provide the Treasurer with copies of all regulatory filings and reports made by the financial organization during the term of the management contract or while the financial organization is holding any accounts, other than confidential filings or reports that will not become part of the program. The program manager shall make available for review by the Treasurer the results of any periodic examination of such manager by any state or federal banking, insurance or securities commission, except to the extent that such report or reports may not be disclosed under law; and

(9) Ensure that any description of the program, whether in writing or through the use of any media, is consistent with the marketing plan developed pursuant to the provisions of this article.

(c) The Treasurer may:

(1) Enter into such contracts as it deems necessary and proper for the implementation of the program;

(2) Require that an audit be conducted of the operations and financial position of the program depository and manager at any time if the Treasurer has any reason to be concerned about the financial position, the record keeping practices or the status of accounts of such program depository and manager; and

(3) Terminate or not renew a management agreement. If the Treasurer terminates or does not renew a management agreement, the Treasurer shall take custody of accounts held by such program manager and shall seek to promptly transfer such accounts to another financial organization that is selected as a program manager or depository and into investment instruments as similar to the original instruments as possible.

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(d) The Treasurer and the Department of Human Services are authorized to exchange data regarding eligible individuals to carry out the purposes of this act.

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