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**OREGON
STATE
TREASURY**

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Owner **Bryan González:
Deputy Director
of Finance**
Policy Area **Finance**

FIN 216: Alternative Methods for Protecting Public Funds

INTRODUCTION & OVERVIEW

Summary Policy Statement

Pursuant to its designation as the sole banking and cash management officer for the State of Oregon, the Oregon State Treasury ("Treasury") has broad authority to review, establish, and modify policies and procedures for the efficient handling of cash and cash equivalents under the control of all Agencies. Agencies are directed to employ the principles, standards, and related requirements for cash management prescribed by Treasury. This policy establishes how Agencies can use Alternative Methods to protect Public Funds when working with Third Party Vendors.

Purpose and Goals

The purpose of this policy is to clarify the expectations of Agencies, as well as their respective Third Party Vendors, with regard to the use of Alternative Methods to protect Public Funds.

Applicability

The provisions of this policy apply to Agencies as defined within, as well as any other entity, including a public university, that has funds held at Treasury by virtue of an intergovernmental or other agreement.

Authority

ORS 293.875, 295.097 & 352.135(3)

POLICY PROVISIONS

Definitions

Agency (Agencies): Every state officer, board, commission, department, institution, branch or agency of the state government, whose costs are paid wholly or in part from funds held at Treasury. While excluded, at times, in other legal contexts, includes Treasury, Secretary of State, Judicial Department, Legislative Assembly, and the Public Defense Services Commission. Agency also is used here to reference those other entities, including public universities, that hold funds at Treasury by virtue of an intergovernmental or other agreement.

Alternative Method(s): A form of collateralization provided by a Third Party Vendor to protect Public Funds held by the Third Party Vendor or the Third Party Vendor's financial institution.

Cash Management: Generally includes, but is not limited to, the collection and deposit of, handling or management of, and payment, use, or transfer of moneys of an entity or organization.

Oregon Public Funds Laws: The legal provisions outlined primarily in ORS chapters 293 and 295, setting out requirements for the collection, deposit, transfer, administration, and collateralization of Public Funds.

Public Funds: Those funds under the control or in the custody of a public official by virtue of exclusive legal right. The Oregon Department of Justice has concluded that this includes funds both directly and indirectly controlled or held by a public official.

Qualified Depository (Qualified Depositories): A bank or credit union that participates in Treasury's Public Funds Collateralization Program.

Third Party Vendor(s): A vendor with whom an Agency contracts (or intends to contract) for provision of services, including Cash Management services, selected by the Agency, and who is unaffiliated with Treasury for purposes of providing such services.

Policy Statements

1. Oregon Public Funds Laws are designed primarily to protect Public Funds against loss by financial institutions. Pursuant to Oregon Public Funds Laws, Treasury generally requires Agencies to deposit Public Funds in Qualified Depositories. When Treasury reviews a Third Party Vendor for qualification under Treasury policy FIN 214, Treasury will give preference to Third Party Vendors that are able to deposit/hold Public Funds directly at a Qualified Depository on behalf of the Agency.
2. If an Agency is unable to identify a Third Party Vendor that can practicably deposit/hold Public Funds directly at a Qualified Depository on behalf of the Agency, Treasury may qualify a Third Party Vendor that demonstrates the ability and willingness to provide one of the following Alternative Methods:
 - a. Cash Deposit. When an Agency receives a cash deposit from a Third Party Vendor as an Alternative Method, the Agency must deposit the cash deposit with Treasury for safekeeping (Agencies should contact Customer Solutions to establish safekeeping

- services).
- b. Surety Bond. When an Agency accepts a surety bond from a Third Party Vendor as an Alternative Method, the Agency must require use of the Public Funds Collateralization Bond Form attached to this policy.
3. Once Treasury qualifies a Third Party Vendor and authorizes use of an Alternative Method, the Agency must include language in its contract with the Third Party Vendor addressing at least the following items:
 - a. The form of Alternative Method authorized for use by the Third Party Vendor.
 - b. The initial dollar amount of the Alternative Method.
 - c. The Agency's right to increase the dollar amount of the Alternative Method at any time to an amount equal to the amount of Public Funds held by the Third Party Vendor and the Third Party Vendor's financial institution.
 - d. The Agency's right to draw against the Alternative Method to offset the amount of Public Funds the Third Party Vendor or the Third Party Vendor's financial institution fails to remit/disburse according to the agreed to remittance/dibursement cycle.
 - e. That the Agency will not return/cancel the Alternative Method until the contracted service has ended and all Public Funds held by the Third Party Vendor and the Third Party Vendor's financial institution have been remitted/disbursed/returned according to the terms of the contract.
 - f. That failure to comply with the terms related to the use of the Alternative Method constitutes a material default under the contract that may result in immediate termination.
 4. When initially determining the dollar amount of an authorized Alternative Method, an Agency must set the dollar amount equal to or greater than the amount of Public Funds that the Third Party Vendor and the Third Party Vendor's financial institution will hold at any time based on a reasonable estimate. (For ease of administration and compliance, Treasury *recommends* that an Agency set the dollar amount of an Alternative Method *greater than* the estimated amount of Public Funds that the Third Party Vendor and the Third Party Vendor's financial institution will hold.)
 5. An Agency must monitor the dollar amount of an Alternative Method *each remittance/ disbursement cycle* to determine whether the dollar amount of the Alternative Method remains equal to or greater than the amount of Public Funds held by the Third Party Vendor and the Third Party Vendor's financial institution.
 - a. If an Agency determines that the dollar amount of the Alternative Method is no longer equal to or greater than the amount of Public Funds held by the Third Party Vendor and the Third Party Vendor's financial institution, the Agency must immediately require the Third Party Vendor to increase the dollar amount of the Alternative Method so that it is again equal to or greater than the amount of Public Funds held by the Third Party Vendor and the Third Party Vendor's financial institution.
 - b. If a Third Party Vendor is unable or unwilling to provide the required increase in the dollar amount of the Alternative Method, the Agency must take action (e.g., require

more frequent remittance/disbursement) to reduce the amount of Public Funds held by the Third Party Vendor and the Third Party Vendor's financial institution so that the amount of Public Funds held by the Third Party Vendor and the Third Party Vendor's financial institution is equal to or less than the dollar amount of the Alternative Method already provided by the Third Party Vendor.

- c. An Agency may reduce the dollar amount of an Alternative Method as long as the dollar amount of the Alternative Method remains at least equal to the amount of Public Funds held by the Third Party Vendor and the Third Party Vendor's financial institution.
6. An Agency that contracts with a Third Party Vendor qualified by Treasury and authorized to use an Alternative Method is solely responsible for ensuring compliance with this policy, including initially determining the dollar amount of the Alternative Method and monitoring/adjusting the dollar amount of the Alternative Method for the duration of the contract.
7. Treasury shall not be responsible for any cost or loss of Public Funds related to an Agency's use of an Alternative Method.
8. If an Agency would like to change the Alternative Method used by a Third Party Vendor qualified by Treasury, the Agency must submit a written request to Treasury. The request must identify both the current and desired Alternative Method, provide a reason for the requested change, and demonstrate the Third Party Vendor's ability and willingness to provide the desired Alternative Method. Treasury has exclusive authority to approve or deny any request.
9. An Agency must immediately notify Treasury if any of the following occurs:
 - a. The Agency decides to draw against an Alternative Method to offset an amount of Public Funds a Third Party Vendor or the Third Party Vendor's financial institution fails to remit/disburse according to the agreed to remittance/disbursement cycle.
 - b. The Agency determines that a Third Party Vendor is in default for failure to comply with the terms related to the use of an Alternative Method.

Exceptions

None.

Failure to Comply

Failure to comply with these requirements may unnecessarily expose an Agency or Agency customers to losses due to insolvency, financial fraud, or negligence and may result in termination of an Agency's or Third Party Vendor's ability to conduct such transactions. Also, Agency employees may be held *personally* liable for losses of Public Funds due to failure to comply with these requirements.

RESOURCES

- [Cash Management Manual Section XI – Safekeeping](#)

ADMINISTRATION

Feedback

Your comments are extremely important to improving the effectiveness of this policy. If you would like to comment on the provisions of this policy, you may do so by e-mailing Treasury at customer.solutions@ost.state.or.us. To ensure your comments are received without delay, *please list the policy number and name in your e-mail's subject*. Your comments will be reviewed during the policy revisions process and may result in changes to the policy.

Attachments

[Public Funds Collateralization Bond Form](#)

Approval Signatures

Step Description	Approver	Date
	Cora Parker: Director of Finance	07/2023
	Bryan González: Deputy Director of Finance	07/2023