



CASH MANAGEMENT/ FISCAL AGENT

LAWS AND PROCEDURES FOR THE SELECTION OF FISCAL AGENTS BY LOCAL POLITICAL SUBDIVISIONS AND STATE ENTITIES

I NTRODUCTION

This White Paper discusses the definitions for, and the procedures for the selection of, fiscal agents for local political subdivisions and for state depositories. It will further discuss the statutory mandates regarding the authority of the Cash Management Review Board and the Legislative Auditor to audit the bank accounts used by the State and local political subdivisions to deposit public funds.

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LOCAL POLITICAL SUBDIVISIONS

The section of law regarding fiscal agency for local political subdivisions has a number of provisions that apply to all entities defined as local depositing authorities. However, there are a number of provisions that apply only to those entities located in a parish of fewer than 100,000 people or more than 100,000 people or specific to cities with a population of more than 150,000.

A. Laws Applicable to All Local Depositing Authorities

“Local Depositing Authorities”

The term, “local depositing authorities”, includes all parishes, municipalities, boards, commissions, sheriffs and tax collectors, judges, clerks of court, and any other public bodies or officers of any parish, municipality or township, **but it does not include** the state and its elected officials, and state commissions, boards, and other state agencies ([R.S. 39:1211](#)).

Unless the law provides otherwise, local depositing authorities must select as the depositories of their funds, financial institutions domiciled or having branch offices located in the parish or municipality or congressional district of the local depositing authority ([R.S. 39:1220](#)).

The treasurer of any depositing authority, or any other public official, having custody of public funds, shall not be responsible for any money or moneys deposited in the bank selected by law, but depositing authorities shall be responsible for the safekeeping and returning of the collateral deposited with them by fiscal agent banks and depositories as security for the deposits made with fiscal agent banks and depositories ([R.S. 39:1232](#)). Older AG opinions state that funds deposited with a non-fiscal agent bank not chosen according to the law are at the risk of the treasurer or other public official depositing them.

Fiscal Agent

Local depositing authorities may deposit funds in a banking institution which is statutorily mandated to be a stock-owned federally insured depository institution organized under the laws of this state or of any other state of the United States, or under the laws of the United States ([R.S. 39:1213](#)).

Any bank selected as the fiscal agent of any depositing authority, or any bank with whom a private contract is entered into, whether the bank is within or without the state, shall give security for the safekeeping and payment of the deposits and shall perform other services for the depositing authority as and in the manner provided by law ([R.S. 39:1218](#)).

No bank shall be eligible to qualify to receive the deposits of any public funds which has not accompanied its application for the deposit with a sworn statement of its financial condition, as

shown by its books, at the close of business in the first day of the month prior to the month in which the application was made ([R.S. 39:1220](#)).

No bank selected as a depository shall assess depositing authorities, the state, or any department, board, commission, or institution thereof, a fee for credit inquiries, deposit verifications or audit confirmations concerning accounts of the depositing authority([R.S. 39:1220](#)).

All fiscal agent or depository banks shall pay at par and receive on deposit at par all checks and drafts drawn by or deposited for the account of the local depositing authority on whatsoever points the checks may be drawn, except as otherwise agreed upon by the parties. The local depositing authority may elect to pay for services rendered by the bank either through compensating balances or through the assessment of service or activity charges, or any combination thereof, as may be agreed upon by the local depositing authority and the fiscal agent or depositing bank ([R.S. 39:1220.1](#)).

Bidding

Bidding for a fiscal agent is required pursuant to R.S. 39:1214. However, which entities must bid for a fiscal agent is limited by R.S. 39:1217.1, which provides that any depositing authority located in a parish or municipality with a population of less than one hundred thousand is generally exempt from the provisions of R.S. 39:1214 through 1242 except for the security requirements in those provisions. Those security requirements include, among others, bonds or other interest-bearing securities guaranteed fully or partially as to principal and interest by the United States or the State of Louisiana and its subdivisions ([R.S. 39:1221](#) and [R.S. 39:1223](#)).

Therefore only those entities located in a parish or municipality with a population of more than one hundred thousand must bid for fiscal agents.

B. Population fewer than 100,000

Definition of Political Subdivision

A local depositing authority located in whole or in part in any parish or municipality with a population of fewer than one hundred thousand has certain requirements that only pertain to them.

Procedure for the Selection of the Fiscal Agent

As mentioned above, these entities do not have to bid¹ pursuant to R.S. 39:1217.1. However, each of these depositing authorities must satisfy any security requirements under state and

¹ Local depositing authority located in municipality of less than one hundred thousand is subject to the requirements of the Local Depositories Law, LSA-R.S. 39:1211, et seq., however, that entity is exempt from the requirement of inviting bids for fiscal agency contracts (AG Op. No. 96-0457).

federal law. All funds, except demand deposits², shall be placed in interest-bearing accounts at an interest rate of not less than twenty-five percent below the discount Treasury bill rate with regard to treasury bills of comparable maturity on deposit within the parish or municipality, in state banks, national banks, or investments in obligations guaranteed by the federal government.

If any of these depositing authorities advertise for banks to qualify as fiscal agents and no bank qualifies, or sufficient banks do not qualify, the depositing authority may make private arrangements and enter into written contracts, with respect to amounts to be loaned, interest on loans, and otherwise, not in conflict with any other requirement. The contracts shall be made with banks in the parish, municipality or congressional district, or as near thereto as practical ([R.S. 39:1217](#)).

C. Population more than 100,000

Definition of Political Subdivision

A local depositing authority located in whole or in part in any parish or municipality with a population of more than one hundred thousand has certain requirements that only pertain to them.

Procedure for the Selection of a Fiscal Agent

These entities must follow R.S. 39:1214 which requires the local depositing authority to give written notice to each of the banks located in any parish which embraces all or any portion of the political subdivision in which the depositing authority is domiciled, setting forth the intention of the depositing authority to select a fiscal agency. This must be done within thirty days prior to the expiration of the current fiscal agent contract. The notice shall specify the time for which the fiscal agency contract shall be made and the conditions and terms of the fiscal agency contract proposed and it shall invite bids under the terms and conditions of the proposal. A copy of the notice shall be published in the official journal of the depositing authority at least three times, the first notice to be published at least fifteen days preceding the date for the selection of the fiscal agency ([R.S. 39:1214](#)).

If the local depositing authority is unable to arrive at a satisfactory fiscal agency contract with a bank located in this state, it may consummate a private contract for deposits or loans or both, either within or without this state, subject to the restrictions in ([R.S. 39:1215](#)).

Therefore, these entities must select depository banks domiciled or having a branch office in the parish unless it cannot arrive at satisfactory fiscal agency agreement.

If one of these local depositing authorities finds existing contracts or any subsequent contracts, inadequate to meet its needs, it may enter into a supplemental contract with any bank within or without the state as is deemed necessary to best to meet its needs. Security for deposits and other requirements must be complied with ([R.S. 39:1216](#)).

² Funds held in an account from which deposited funds can be withdrawn at any time without any advance notice to the depository institution.

D. Cities with a Population over 150,000

Definition of Political Subdivision

Cities in this state having a population exceeding one hundred fifty thousand according to the last preceding federal census of the United States, or any department, board, commission, or institution thereof ([R.S. 39:1241](#)).

Definition of Depositing Authority and Fiscal Agent

“Depositing authority” as used in reference to these entities means the commissioner of public finance or the finance officer, or any department, board, commission, or institution of cities located in this state having a population exceeding one hundred fifty thousand according to the last preceding census of the United States for which the official figures have been published ([R.S. 39:1245](#)).

“Fiscal agent bank” or “depository” means any bank selected and designated by the commission council or governing body of such cities, for deposit of funds belonging to or held in custody for the above designated cities or any department, board, commission, or institution thereof ([R.S. 33:2932](#)).

Procedure for the Selection of the Fiscal Agent

Fiscal agent banks for the deposit of funds belonging to these cities or any department, board, commission, or institution thereof, shall be selected and designated in the manner provided by resolution or ordinance of the commission council or the governing body of the cities under the terms and conditions deemed appropriate or advisable by them ([R.S. 39:1241](#) and [R.S. 33:2928](#)).

Responsibility

No person or officer of any depositing authority, nor the depositing authority itself, shall be responsible for any funds deposited in the fiscal agent selected if they have complied with the Local Depositories’ Law. All depositing authorities shall be responsible for the safe keeping and return of the collateral deposited with them by fiscal agent banks as security for deposits ([R.S. 39:1244](#) and [R.S. 33:2931](#)).

Charges

All banks selected as fiscal agents or depositories for the deposit of funds belonging to these cities or any department, board, commission, or institution thereof, shall cash without charge and receive on deposit at par all checks and drafts drawn by them or in their favor ([R.S. 33:2929](#)).

No bank selected as fiscal agent or depository for the deposit of funds belonging to a local depositing authority, as that term is defined in R.S. 39:1211, shall charge a fee for credit inquiries,

deposit verifications and audit confirmations concerning accounts of the depositing authority ([R.S. 49:321](#)).

E. Tax Collectors

All public funds received by and in the hands of tax collectors, pending their transmission to the State Treasurer or public body for whose account the same are collected, shall be deposited in accordance with ([R.S. 39:409](#)).

The state tax collector for the city of New Orleans shall deposit daily in such fiscal agent banks in the city of New Orleans as shall be designated by the State Treasurer, to the account of the State Treasurer, all state taxes collected by him and shall send to the State Treasurer, on the same day that the deposits are made, duplicate deposit slips evidencing such deposits ([R.S. 47:2059](#)).

F. Sheriffs

All public funds received by and in the hands of sheriffs, pending their transmission to the various public bodies for whose accounts they are collected, shall be deposited in interest bearing accounts by the sheriff daily, whenever practicable, with a bank domiciled in the parish where the funds are collected ([R.S. 39:409](#)).

G. Oversight Authority of the Legislative Auditor

The Legislative Auditor has the general audit authority provided for in the Audit Law to see any records of the local auditee. The Auditor, or the independent CPA, may request the local auditee to provide access to any bank accounts it owns or any records related to the fiscal agent. There is no statutory audit authority specifically related to banking records nor is there any statutory audit authority over the fiscal agent in the Local Depositories Law.

STATE DEPOSITING AUTHORITIES

A. Definition, Designation and Status of Funds

Definition of State Depositing Authority

“State depositing authority” means the state treasurer, and other elected state officials or any department, board, commission, or institution of the state; and **“depository”** or **“fiscal agent bank”** means any bank selected and designated by the Interim Emergency Board for deposit of state funds by the treasurer and other elected state officials or any department, board, commission, or institution of the state ([R.S. 49:319](#)).

Designation of State Depositories

The Interim Emergency Board shall designate as state depositories such financial institutions doing business in this state as it may deem advisable after considering the recommendations of the treasurer ([R.S. 49:317](#)).

Public Funds

All operating bank accounts of state agencies and all balances in the operating bank accounts are public funds until final disbursement is made therefrom ([R.S. 49:315](#)).

B. Operations

Notification Required

Any state depositing authority which deposits state funds in a bank designated as a fiscal agent bank by the Interim Emergency Board shall provide written notice to the state treasurer upon opening any type of account at the fiscal agent bank ([R.S. 49:320.1](#)).

Charges

All banks selected as fiscal agents or depositories for the deposit of funds belonging to the state, or any department, board, commission or institution thereof, shall pay at par and receive on deposit at par all checks and drafts drawn by or in favor of the state or any department, board, commission, or institution, upon whatsoever point these checks and drafts may be drawn all as part of the consideration for receiving deposits of state funds ([R.S. 49:321](#)).

No bank selected as fiscal agent or depository for the deposit of funds belonging to the state, or any department, board, commission, or institution thereof, shall charge a state depositing authority, as that term is defined in R.S. 49:319, or a local depositing authority, as that term is

defined in R.S. 39:1211, a fee for credit inquiries, deposit verifications and audit confirmations concerning accounts of the depositing authority ([R.S. 49:321](#)).

All banks selected as fiscal agents or depositories for the deposit of funds belonging to the state, or any state agency, shall pay at par and receive on deposit at par all checks and drafts drawn by or in favor of the state or state agency ([R.S. 49:316](#)).

The state or any agency may elect to pay for services rendered either through compensating balances or through the assessment of service or activity charges, or any combination thereof ([R.S. 49:316](#)).

Responsibility

State depositing authorities who have complied with the provisions of R.S. 49:320 through 49:324 are not responsible for any funds deposited in depositories selected by the Interim Emergency Board (IEB). Depositing authorities **are**, however, responsible for the safekeeping and returning of the collateral deposited with them by fiscal agent banks as security for the deposits made by them with the state depository ([R.S. 49:323](#)).

C. Interim Emergency Board

Composition

Created by La. Const. art. VII, § 7, the Interim Emergency Board ("IEB") is composed of the governor, lieutenant governor, state treasurer, presiding officer of each house of the legislature, chairman of the Senate Finance Committee, and chairman of the House Appropriations Committee, or their designees.

Powers

Aside from its emergency powers, the IEB selects and approves the depositories which are then selected by state depositing authorities to deposit public funds with ([R.S. 49:317](#)).

D. State Cash Management Review Board

Creation

The Cash Management Review Board ("CMRB") is composed of the State Treasurer, the Legislative Auditor, the Commissioner of Administration, the Chairman of the Senate Committee on Finance, and the Chairman of the House Committee on Appropriations, or their designees ([R.S. 39:371](#)).

Powers

The CMRB is empowered to require all state agencies to submit a report of all banking and checking accounts and the balances in each. All banking and checking accounts opened or to be opened by state agencies must have the approval of the CMRB in writing for authorization for the account and the method of compensation [\(R.S. 39:372\)](#).

The CMRB shall approve the cash management policies and procedures adopted by each State agency. [\(R.S. 39:372 \(C\)\)](#)

The CMRB shall review and approve the cybersecurity plans and financial security procedures relative to cash Management for each State agency, including any revisions. [R.S. 39:372\(D\)](#).

The CMRB is empowered to review all state agency requests for the establishment of escrow funds in the State Treasury, and if warranted, to approve the requests in writing. [\(R.S. 39:372 \(H\)\)](#).

Definition of State Agency

“State agency” for purposes of the cash management law means each state agency, department, board, or commission required to deposit monies in the state treasury in accordance with Article VII, § 9(A) of the Louisiana Constitution of 1974 [\(R.S. 39:372\)](#). Therefore, those agencies not required to deposit monies in the Treasury are not subject to the Cash Management Review Board or this law [\(AG. Op. No. 10-0090³\)](#).

E. Procedures for Selection of the Fiscal Agent

The law states that fiscal agent banks for the deposit of funds belonging to any state depositing authority shall be selected and designated in the manner provided by resolution of the IEB and under the terms and conditions deemed appropriate or advisable by the board (R.S. 49:320). The CMRB must approve of the selection from this designated list.

The IEB designates a list of approved fiscal agents every four years. The current list is dated July 1, 2023-June 30, 2027. The list can be found [here](#). In practice, the procedure appears to be:

³ [AG Op. No. 10-0090](#) specifically opines that the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, the Board of Supervisors of Southern University and Agricultural and Mechanical College, the Board of Supervisors of the University of Louisiana System, and the colleges and universities supervised and managed by each are excluded from the requirements of the State Cash Management Review Board, La. R.S. 39:371, *et seq.* because of the exemption in R.S. 49:308.

The IEB sends out letters to state banks and credit unions informing them of the deadline to have their application in to the IEB, usually in the month of February of the fourth year. Any financial institution desiring designation as a fiscal agent/state depository for the state of Louisiana must request said designation on the official IEB application and provide the documentation requested therein. This [application](#) requires fiscal agents to agree to:

- Maintain deposit insurance through the Federal Deposit Insurance Corporation or the National Credit Union Administration or their successors and shall notify the Department of the Treasury immediately, in writing, if such deposit insurance is to be terminated; and
- Maintain collateral for any funds on deposit by any state depositing authority (as defined by Section 319 of Title 49 of the Louisiana Revised Statutes of 1950) which shall exceed at any time the amount insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration by the pledge of securities in the manner provided by [R.S. 6:748.1](#) and [R.S. 49:321](#).

The State Treasurer's Office (STO) then researches the applications filed by the potential fiscal agents thusly:

- STO receives the state bank and credit union applications from IEB;
- STO researches bank information using the financial information retrieved from Highline Financial Intelligence information services. Treasury subscribes to Highline for the online banking information service;
- Highline web site: www.highlinefi.com
- STO also retrieves information through the Louisiana Office of Financial Institutions web site, www.ffiec.gov;
- STO analyzes the bank financial information and prepares an excel report of the institution's asset quality, earnings, liquidity and ratings information. The report thus consists of the following financial information:
 - Name of Financial Institution
 - Location
 - Capital Adequacy
 - Total nonperforming loans/gross loan
 - Loan loss reserve to nonperforming loans
 - Return on average assets
 - Return on average equity
 - Liquid assets/total assets
 - Core deposits/total deposits
 - Highline rating within peer group

- CRA Rating (The Community Reinvestment Act (CRA) requires the FDIC to rate financial institutions in the context of information about the institution (financial condition and business strategies), its community (demographic and economic data), and its competitors.)

F. Oversight Authority

All state agencies are required to furnish information requested by the CMRB regarding the policies and procedures for its handling of receipts and disbursements. All agencies are required to fully cooperate [\(R.S. 39:372\)](#).

The CMRB is further authorized to approve the cash management policies and procedures adopted by each state agency [\(R.S. 39:372\)](#).

The CMRB shall review and approve the cybersecurity plans and financial security procedures relative to cash Management for each State agency, including any revisions. [R.S. 39:372\(D\)](#).

The CMRB is authorized to review all State agency requests for the establishment of escrow funds in the State Treasury, and if warranted to approve the requests in writing. [\(R.S. 39:372\)](#)

CMRB receives the monthly reports required by R.S. 49:320.2(C), in regard to escrow funds and agency accounts, and compiles the agency reports into one report for submission to the Joint Legislative Committee on the Budget. [\(R.S. 39:372\)](#)

The CMRB is required to make a written report to the legislature as they deem necessary prior to the beginning of each regular session of such recommendations for changes in cash management law and practices as are deemed appropriate [\(R.S. 39:372\)](#).

State agencies are required to submit a quarterly report of all banking and checking accounts and balances to the CMRB, which are forwarded to the Joint Legislative Committee on Budget (JLCB). The CMRB is required to make an additional written report relative to the banking and checking accounts of all state agencies to submit to the JLCB quarterly. (R.S. 39:372). After a hearing, the JLCB forwards a copy of the quarterly report, with whatever changes deemed necessary, to the Revenue Estimating Conference to be used in estimating fees and self-generated revenues for the official forecast. [\(R.S. 39:372\)](#).

Legislative Auditor's Oversight Authority

The Legislative Auditor is required to review each state agency's compliance with the CMRB's approved cash management policies and procedures. Any noncompliance shall be reported to the Legislative Audit Advisory Council and to the CMRB [\(R.S. 39:372\)](#).

G. Applicability

The provisions in cash management law shall not apply to parish and municipal governments and agencies, or to any state retirement system or to any state agency not included in the executive operating budget which under authority of the Constitution operates preponderantly from fees and charges for the shipment of goods in international maritime trade and commerce. No provision in cash management law shall be in conflict with any existing Federal laws or regulations governing the receipt, deposit, investment or withdrawal of Federal funds ([R.S. 39:374](#)).