

**CASH MANAGEMENT/FISCAL AGENT
LAWS AND PROCEDURES FOR THE SELECTION OF FISCAL AGENTS
BY STATE DEPOSITING AUTHORITIES
REVISED: 08/2023**



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WHITE PAPER

I NTRODUCTION

This White Paper discusses the procedures for the selection of fiscal agents for state depositories. It will further discuss the statutory mandates regarding the authority of the Legislative Auditor and the Cash Management Board to audit the bank accounts controlled by State entities.

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 and the Cash Management Review Board 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 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. CRMB shall approve the cash management policies and procedures, cybersecurity plans and financial security procedures adopted by each State Agency. 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](#)).

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. 10-0090](#)¹).

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.

¹ [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.

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The IEB designates a list of approved fiscal agents every four years. The current list is dated July 1, 2019-June 30, 2023. The list can be found [here](#). In practice, the procedure appears to be:

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](#).

There appears to be no reason that other requirements, such as audit and access to accounts by auditors, could not be added to the fiscal agent application.

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.ffeic.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 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 [\(R.S. 39:372\)](#).

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. [\(R.S. 39:372\)](#)

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. [\(R.S. 39:372\)](#).²

² [Act 587 of the 2016 Regular Session](#).

There is no statutory reason that audit review of banks could not be included.

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](#)).

H. JP Morgan Chase Bank Contract with the State

Under Article XIV, entitled *Miscellaneous*, in Section 14.14 of the referenced contract, the Legislative Auditor, the Office of the Governor-Division of Administration, and/or any designee of the Treasurer are given the authority to audit all accounts of the Bank that relate to the contract. Should more detailed audit requirements be created by the CMRB or added to the fiscal agent application by the IEB, they could be placed in this Section or preferably a separate Article in the contract. Such Article, if implemented, should address any detailed audit requirements, including obtaining a complete listing of bank accounts from fiscal agent banks when the Auditor requests bank confirmations of cash balances on deposit.

I. Conclusion

It is clear that the oversight mechanism for state depositing authorities is with the Cash Management Review Board and the Interim Emergency Board. There appears to be no reason the IEB could not add certain audit and access requirements to the official fiscal agent application form. This would appear to be the simplest method of ensuring audit access to bank accounts.

Further, the CMRB is authorized to approve the cash management policies and procedures adopted by each state agency. It could approve new policies and practices to ensure a

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mechanism for obtaining a complete listing of bank accounts from fiscal agent banks when the Auditor requests bank confirmations of cash balances on deposit (at no cost).

Additionally, CMRB could place in its report to the Legislature its recommendations for any changes to cash management policies it determines are necessary, including detailed audit requirements.

The Auditor's current role is to ensure compliance with the CMRB's cash management policies and procedures. The addition of a few simple requirements to the fiscal agent application on the fiscal agent end, and the depositing authority contracts on the depositing authority end, based on the CMRB's recommendations to the Legislature, would allow better access by the Auditor to all of the state bank accounts.