

5:30-17

ELECTRONIC DISBURSEMENT CONTROLS FOR AUTHORIZED THIRD-PARTY DISBURSEMENT PURPOSES

5:30-17.1 Purpose

This subchapter sets forth standards for local governments to follow when contracting with an organization to make disbursements on the local unit's behalf, as permitted at N.J.S.A. 52:27D-20.1 and this subchapter. This subchapter is intended to ensure that local units understand the risks associated with electronic disbursements and implement sound fiscal and control practices governing such disbursements. This subchapter is limited in application to third-party disbursement services authorized for use by the Local Finance Board by local units, namely preparations and calculations for and the disbursement of salaries and wages, all withholdings, and additional related liabilities, as well as disbursements for utility bills.

5:30-17.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Chief financial officer" or "CFO" means the individual statutorily responsible for supervising the accounts and finances of a local unit and shall include any certifying and approval officer appointed pursuant to N.J.S.A. 40A:5-17(a), any individual appointed in accordance with N.J.S.A. 18A:19-4.1, or such individual in similar capacity legally appointed by the governing body of a local unit.

"Contract" means any written agreement entered into by a local unit and a disbursing organization for the purposes authorized in these rules.

"Dedicated cash account" means a demand deposit bank account owned by the local unit and funded solely for use by a disbursing organization in performing its duties and responsibilities in accordance with the contract.

"Disbursement" means any payment of moneys, including any transfer of funds, by any means, to the dedicated cash account established for use by a disbursing organization.

"Energy tracking and utility bill management systems" mean systems that provide energy bill auditing, bill consolidation, and bill payment services for the consumption of electricity, heating fuel, natural gas, propane, cogeneration (chilled water, steam, and hot water), water supply, and wastewater service bills.

"Governing body" means the board, commission, council or other body having control of the finances of the local unit. In those local units in which a chief executive officer is authorized by

law to participate in such control through powers of recommendation, approval or veto, the term includes such chief executive officer to the extent of such participation.

"Local unit" means a municipality, county, school district, authority subject to the "Local Authorities Fiscal Control Law," P.L. 1983, c.313 (N.J.S.A. 40A:5A-1 et seq.), or a school district as defined in N.J.S.A. 18A:18A-2(d).

"Payment documentation" includes transmittals, remittance forms, tax returns, releases, filings, reports, and tapes supporting the disbursement of funds.

"Payroll" means the object and result of all preparations and calculations for, and the disbursement of salaries and wages, all withholdings therefrom, and additional liabilities related thereto.

"Third-party disbursement service organization or disbursing organization" means an organization engaged either directly or indirectly to perform any of the services authorized pursuant to this subchapter.

"Third-party disbursement service" means such service or services of the type authorized pursuant to this subchapter. Such service or services may include the processing and disbursing of payroll and payroll agency obligations and energy tracking and utility bill management systems.

"Transaction" means any activity that, in accordance with sound fiscal practices, affects the general books of entry, ledgers, records, or logs of a local unit.

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5:30-17.3 Authorization to use a third-party disbursement service organization for payroll and other specified purposes

(a) The governing body of a local unit may enact policies for contracting with a disbursing organization to process payroll and utility bill disbursements on its behalf. Such policies shall be formally authorized by ordinance or resolution of the governing body, as appropriate to the form of government and shall specify the tasks that may be performed by a disbursing organization. Such policies may involve the use of a disbursing organization:

1. To prepare the necessary payroll payment documentation and execute disbursements from the local unit's bank account on behalf of the local unit;
2. To audit, consolidate, and pay utility bills to ensure compliance with tariffs and usage records;
3. To prepare payment documentation, take possession of local unit funds, and make such disbursements itself on behalf of a local unit for (a)1 and/or 2 above; or

4. Any combination of (a)1 and/or 2, and 3 above.

(b) This subchapter applies to disbursing organizations and local units who contract with one another for the determination and disbursement of payroll and related funds, and energy tracking and utility bill management systems.

1. The following service providers are not required to comply with this subchapter:

i. Payroll service providers that perform payroll calculations and do not control the disbursement of payroll funds; and

ii. Tax pay and file service providers that are certified users of the Electronic Federal Tax Payment System (EFTPS) batch filer program and the State of New Jersey EFTPS batch filer program, that do not release, transfer or otherwise execute disbursements of the local unit.

2. The following service providers are required to comply with this subchapter:

i. Payroll service providers who use their own customized programming process to execute disbursements for the local unit; and

ii. Payroll service providers who use a third party processor to execute disbursement for the local unit.

5:30-17.4 Local unit requirements

(a) Local units shall meet the following terms and conditions prior to executing contracts with disbursing organizations:

1. Prior to the execution of a contract with a disbursing organization, the governing body shall approve the use of disbursing organizations for the payment of claims pursuant to N.J.A.C. 5:30-17.3(a). Such approval shall describe those tasks to be performed by a disbursing organization to meet the governing body's objectives, including specific authorization to use electronic means for the disbursing of funds.

2. Permissible tasks for payroll services can include and are not limited to data collection, agency report preparation, calculation of withholding, direct deposit of payroll disbursements, or local unit transfer of funds to the disbursing organization's account for subsequent payment.

3. Permissible tasks for energy tracking and utility bill paying services can include:

i. Auditing, consolidation, and payment of utility accounts to ensure the proper account type and appropriate tariffs are being applied and usage is accurately recorded;

ii. Upon approval and transfer of funds by the local unit, payment of utility bills on the local unit's behalf; and

iii. Services related to (a)3i and ii above.

4. The governing body shall, by resolution, approve any renewal or extension of a contract under this subchapter.

5. Pursuant to N.J.S.A. 40A:5-17(a)(1) or 18A:19-4.1, the governing body shall designate an approval officer to be responsible for authorizing and supervising the activities of the disbursing organization. For authorities operating under N.J.A.C. 5:31-4.1, the governing body shall designate an approval officer to authorize and oversee the activities of disbursing organizations.

i. The governing body shall supplement the duties of the approval officer established in accordance with N.J.S.A. 40A:5-17(a)(2) and 18A:19-4.1 to include the reconciliation and analysis of all general ledger accounts affected by the activities of the disbursing organization.

ii. If the terms of the contract between the disbursing organization and the local unit provide that the disbursing organization will hold funds of the local unit pending transmittal of those funds to a payee, the governing body must specifically authorize the disbursing organization to hold the funds pending transmittal.

iii. The governing body shall require the disbursing organization to provide the governing body with notification in the event:

(1) The disbursing organization detects irregularities that may indicate potential fraud, noncompliance with appropriate laws, dishonesty, or gross incompetence on the part of the approval officer; or

(2) The disbursing organization experiences circumstances that could jeopardize its ability to continue operations or otherwise interrupt the services provided to the local unit.

iv. A transfer of local unit funds between local unit accounts, to a dedicated cash account or to an account owned or controlled by a disbursing organization shall be deemed a disbursement subject to the Local Fiscal Affairs Law, N.J.S.A. 40A:5-1 et seq., and is to be treated as in compliance with N.J.S.A. 18A:19-9 for school payrolls.

6. After the governing body has initially approved the use of disbursing organizations pursuant to N.J.A.C. 5:30-17.3 and (a) above, the CFO shall qualify disbursing organizations pursuant to the requirements of N.J.A.C. 5:30-17.5.

i. Prior to the execution of any contract for the provision of third-party disbursement services, the contract shall be reviewed and approved by the CFO of the local unit as to terms, including satisfaction of the requirements of N.J.A.C. 5:30-17.5 and 17.6.

ii. Prior to the extension or renewal of a contract, the CFO shall complete a review of the services rendered under the contract. Such review shall be conducted in compliance with N.J.A.C. 5:30-17.5.

5:30-17.5 Eligibility requirements for disbursing organizations

(a) Disbursing organizations shall meet the following conditions and/or requirements:

1. The disbursing organization shall provide evidence of satisfactory internal control, evidence of which shall be required by the CFO. Such evidence may be:

i. The disbursing organization's Report on Policies and Procedures Placed in Operation and Tests of Operating Effectiveness, performed pursuant to AICPA (American Institute of Certified Public Accountants) Statement on Standards for Attestation Engagements No. 18, or such successor standards as may be promulgated by AICPA;

ii. A completed SysTrust™ examination with an unqualified report on Availability, Security, Integrity and Maintainability completed in accordance with AICPA/CICA (Canadian Institute of Chartered Accountants) SysTrust™ Principles and Criteria for Systems Reliability; or

iii. Evidence of compliance with a mutually agreed upon external standard for determination of the sufficiency of a system of internal controls that support the work to be performed in accordance with the policies established by the local unit.

2. For third-party disbursement of payroll and related funds, all disbursing organizations shall have offices within a distance acceptable to the CFO of the local unit such that the physical delivery and receipt of documents and records can occur in a manner that assures the delivery of paychecks on regularly scheduled paydays.

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5:30-17.6 Contract terms and conditions

(a) All contracts between a local unit and disbursing organization must:

1. Contain adequate provisions to indemnify the local unit against any losses incurred as a result of the actions or inactions of the disbursing organization;

2. Require the disbursing organization to be responsible for the errors and omissions of its employees or agents, particularly where those errors and omissions prevent timely disbursements on behalf of the local unit from being made, including penalties, fines, interest, and damages; and,

3. In those cases where the disbursing organization takes possession of local unit funds, require adequate insurance to cover such losses as may arise as a result of errors, omissions, failure to perform or dishonesty in amounts at least equal to the highest level of exposure to the local unit for 30 days. Such exposure as regards cash shall be based on at least the amount of money accessible by the disbursing organization during said 30 day period and shall not include moneys that the disbursing organization cannot divert to its own benefit.

(b) All disbursing organizations shall have a written complaint procedure in existence. At a minimum, the complaint procedure shall require that a complaint log be maintained, which shall be available to the local unit for inspection.

(c) Upon reasonable notice, the disbursing organization shall allow an independent auditor compensated by the local unit to examine its internal controls applying SSAE 18 standards, or such successor standards as may be promulgated by AICPA, SysTrust™ standards or other standards and procedures mutually agreed upon to ensure accurate, complete and timely work product. Upon completion, the independent auditor's report shall be provided to the CFO and governing body and shall be for internal use only.

(d) All disputes between the parties and disputes concerning the contract or its operation shall be in writing and forwarded to the other party via registered mail. All contracts must have appropriate provisions for:

1. Dispute resolution between the parties;

2. In the case of third-party disbursement of payroll and related funds, the service of process to the disbursing organization in New Jersey; and,

3. Application of New Jersey law.

(e) Within five working days of each disbursement on behalf of a local unit, the disbursing organization shall provide to the CFO, reports and documentation supporting the disbursements. The contract shall also specify the information required by the local unit to enable it to reconcile its books and records.

(f) All corrections and adjustments must be completed and provided to the local unit promptly. All adjustments and reports of adjustments resulting in disbursements must be reported consistent with the provisions of subsection 17.6(e).

(g) Copies of notices, memoranda, complaints or other correspondence received by the disbursing organization regarding local unit accounts shall be forwarded to the local unit within 48 hours of receipt.

(h) Contracts for third-party disbursement services are not data processing service contracts under N.J.S.A. 40A:11-15(5) and 18A:18A-42(d).

(i) All contracts for third-party disbursement services shall have appropriate provisions for termination of the contract, including, but not limited to termination for failure to perform on the part of the disbursing organization.

(j) All contracts entered into between local units and disbursing organizations for the provision of third-party disbursement services shall be in writing and executed by all parties, including intermediaries, such as banks providing payroll services as part of a compensating balance agreement. This subsection shall not be construed to prevent local units from utilizing a contract or contracts entered into on behalf of the State by the Division of Purchase and Property in the Department of Treasury whose terms have been extended to local units.

(k) The contract for third-party disbursement services must require that no disbursement is made unless the demand for payment meets the requirements of N.J.S.A. 40A:5-16, 18A:19-2 and this subchapter.

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