

RULE PROPOSALS

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

COMMUNITY AFFAIRS

(a)

DIVISION OF LOCAL GOVERNMENT SERVICES

LOCAL FINANCE BOARD

Disbursements without Vendor Certification

Reproposed Amendments: N.J.A.C. 5:30-9A.3 and 9A.7

Proposed Amendments: N.J.A.C. 5:30-9A.2, 9A.4, and 9A.5

Authorized By: Local Finance Board, Thomas H. Neff, Chair.

Authority: N.J.S.A. 40A:5-16.c.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2012-172.

Submit comments by January 18, 2013 to:

Patricia McNamara, Executive Secretary
Local Finance Board
Department of Community Affairs
P.O. Box 803
Trenton, New Jersey 08625-0803

The agency proposal follows:

Summary

Pursuant to the enabling authority provided by N.J.S.A. 40A:5-16.c, the Local Finance Board (the "Board") proposes amending existing N.J.A.C. 5:30-9A.2 through 9A.5 and 9A.7. These amendments update the procurement card oversight process; allow those contracting units who have a qualified purchasing agent managing the program to eliminate the current per-transaction limitation on procurement cards; and allow for a limited exception to the prohibition on procurement card use for travel, lodging, and meal expenses for purposes of a County Sheriff or Prosecutor bringing in defendants or witnesses for matters before the courts.

The Board proposes amending N.J.A.C. 5:30-9A.2 to modify two definitions as well as define the term "program manager." A program manager is an individual charged with day-to-day oversight and management of a contracting unit's procurement card program. The definitions of "chief administrative officer" and "permitted use" have been modified to reflect the role of the program manager in the contracting unit's procurement card program. The definition of "electronic funds transfer" has been modified to exclude procurement cards.

N.J.A.C. 5:30-9A.3, which covers authorization for use of procurement cards and electronic funds transfers for acquiring goods and services, presently establishes a monetary limit on individual transactions

involving procurement cards and electronic funds transfers. The Board proposes amending N.J.A.C. 5:30-9A.3(a)1i, 2i, and 3i to allow contracting units to eliminate the monetary limit currently in place for procurement card transactions, so long as the contracting unit has a program manager with a Qualified Purchasing Agent certification from the Division of Local Government Services. The proposed amendment would apply to the following conditions:

- 1) Conditions for advance payment under N.J.S.A. 40A:5-16.c(1), covering circumstances when payment to vendors is required in advance of the delivery of certain goods and services that cannot be obtained from any other source at comparable prices;
- 2) Conditions under N.J.S.A. 40A:5-16.c(2), when ordering, billing and payment transactions for goods or services are made through a computerized electronic transaction; and
- 3) Conditions under N.J.S.A. 40A:5-16.c(3), which permits local units to pay out monies without requiring certification.

The Board concludes that allowing contracting units to eliminate the transactional threshold on procurement card transactions when Qualified Purchasing Agents manage the program will not compromise fiscal accountability. As part of their certification process, Qualified Purchasing Agents undergo training that prepares them to effectively utilize the controls that ensure effective oversight of procurement card usage. In addition, procurement card technology has improved since the original rules were promulgated in 2003. As such, these amendments will enhance contracting units' procurement flexibility while ensuring proper safeguards are in place.

The Board proposes modifying N.J.A.C. 5:30-9A.4 to provide technical clarification, as well as to delineate the program manager's oversight responsibilities over the contracting unit's procurement card program. Currently, the Chief Financial Officer (CFO) is given primary responsibility for day-to-day oversight of procurement card usage. The proposed amendments enable contracting units to name an individual other than the CFO to manage their procurement card program, allowing for greater flexibility. Currently, N.J.A.C. 5:30-9A.4(a)1 refers to examples of specific purposes and dollar amounts for which procurement cards may be used. The Board proposes eliminating this language to eliminate any inference that maximum thresholds apply to certain items other than those limitations stated in these rules.

N.J.A.C. 5:30-9A.5 sets out the required control functions of a procurement card. The Board proposes technical amendments to N.J.A.C. 5:30-9A.5(a) that accommodate other proposed amendments delineating the program manager's oversight role.

N.J.A.C. 5:30-9A.7 addresses policies and practices governing procurement card use and specifies the types of transactions for which procurement cards may be used. The Board proposes amending N.J.A.C. 5:30-9A.7(a)1 to require program managers and chief administrative officers to complete training on the policies and procedures governing procurement card use.

The Board also proposes amending N.J.A.C. 5:30-9A.7(a)2 in codification as well as content. In terms of codification, the Board proposes splitting the content of existing N.J.A.C. 5:30-9A.7(a)2 into three parts, creating new paragraphs (a)3 and 4. Proposed new N.J.A.C. 5:30-9A.7(a)3 states that procurement cards shall not be used to purchase personal property or services, including travel and dining expenses for "government employees, volunteers or officials." An additional proposed amendment inserts the following sentence at the end of the new paragraph:

"Subject to the authorization process and limits of this subchapter, procurement cards may be used by a Qualified Purchasing Agent of a county, or the County Sheriff or County Prosecutor if authorized by a resolution or ordinance of the governing body of the county, to arrange for travel, room, and board expenses of defendants, witnesses, or experts required for matters before the courts."

Current N.J.A.C. 5:30-9A.7(a)2 places a blanket prohibition on the use of procurement cards for the purchase of personal property or services, including travel and dining expenses. The Board finds the above-referenced amendments will solve the substantial procurement complications currently faced when County Sheriffs or County Prosecutor's offices must make travel and lodging arrangements for defendants and witnesses, most of which must now be conducted online. However, the Board also recognizes that in certain counties the procurement functions of a County Sheriff or County Prosecutor are directed through the county purchasing department. As such, the Board proposes amendments that allow counties with a Qualified Purchasing Agent to have said QPAs utilize procurement cards for paying the travel, room, and board expenses of defendants and witnesses whose presence is required by the County Sheriff or County Prosecutor in matters before the courts. If a county's governing body so authorizes by a resolution or ordinance, the County Sheriff or County Prosecutor may be permitted to arrange for said expenses through procurement cards.

The balance of current N.J.A.C. 5:30-9A.7(a)2 remains unchanged, but will be split amongst proposed paragraphs (a)2, 3, and 4, with the recodification of current N.J.A.C. 5:30-9A.7(a)3 as paragraph (a)5. The Board proposes modifying N.J.A.C. 5:30-9A.7(b), (d), and (e) to replace the term "CFO" with "program manager," as well as eliminating the phrase in subsection (e), "[I]n addition to the annual assessment of internal controls conducted by the registered municipal accountant" to avoid the inference that a contracting unit's auditor should engage in management functions.

Entities subject to the Public School Contracts Law are not among the contracting units statutorily authorized to use procurement cards and electronic funds transfers. The proposed rule amendments do not alter the contracting unit's responsibility to comply with the requirements of the Local Public Contracts Law, the Local Unit Political Contribution Disclosure Compliance Law (more commonly referred to as the "Pay-to-Play" law), or any other applicable laws pertaining to procurement.

This notice of proposal supersedes PRN 2012-086, which also dealt with disbursements without vendor certification, where amendments were proposed to N.J.A.C. 5:30-9A.3 and 9A.7. The amendments proposed herein differ from the former by limiting lifting the current 15 percent of bid threshold limitation on procurement card usage only for those contracting units with a Qualified Purchasing Agent managing the procurement card program; creating and defining the role of a "program manager" such that an individual other than the chief financial officer can manage the day-to-day operations of the procurement card program; and enable county governing bodies to have the discretion to permit county prosecutors and sheriff's officers to utilize procurement cards for limited travel purposes.

The Board received comments on the initial notice of proposal from the New Jersey League of Municipalities, New Jersey Association of County Finance Officers, New Jersey Association of County Purchasing Officials, and the Southern New Jersey Chapter of the National Institute of Governmental Procurement. The aforementioned changes from the prior notice of proposal were made in response to comments from the League of Municipalities, the Southern New Jersey Institute of Governmental Procurement, and the Association of County Finance Officers. Comments from the Association of County Purchasing Officials

recommended that the Board retain the 15 percent of bid threshold limitation on procurement card usage; however, the Board finds that lifting the procurement card transaction limitation for those contracting units with a Qualified Purchasing Agent serving as program manager will allow the contracting unit to enjoy increased procurement flexibility while retaining necessary fiscal controls. The remaining comments dealt with matters that could be addressed through technical guidance from the Division of Local Government Services.

As the Board has provided a 60-day comment period on this notice of proposal, this notice is exempt from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3a(5).

Social Impact

The proposed rule amendments are anticipated to allow greater flexibility and efficiency in public procurement given the widespread growth of e-commerce.

Economic Impact

The Board anticipates that the proposed rule amendments will not have a fiscal impact on local units and the constituents they serve. Rather, the proposed amendments will expand the purchasing options available to contracting units authorized to use procurement cards without compromising fiscal accountability.

Federal Standards Statement

No Federal standards analysis is required because the proposed rule amendments are not being proposed to implement, comply with, or participate in any program established under Federal law or under a State law that incorporates or refers to Federal law, standards, or requirements.

Jobs Impact

The Board does not anticipate the creation or loss of any jobs as a result of the proposed rule amendments.

Agriculture Industry Impact

The Board does not anticipate that the proposed rule amendments will have an impact on the agriculture industry.

Regulatory Flexibility Statement

The proposed rule amendments would affect all local units which are authorized to use procurement cards and electronic funds transfers, and would not impose any reporting, recordkeeping or compliance requirement on "small businesses" as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Housing Affordability Impact Analysis

The proposed rule amendments will have no anticipated impact on housing affordability, as they pertain to the use of procurement cards for public procurement.

Smart Growth Development Impact Analysis

The proposed rule amendments will have no anticipated impact on housing production in Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan, as they pertain to the use of procurement cards for public procurement.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

5:30-9A.2 Definitions

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

...

"Chief administrative officer" means the appointed employee who oversees the day-to-day administrative affairs of the contracting unit including, but not limited to, the following titles: business administrator, administrator, **and** township or city manager. [In the absence of a chief administrative officer, the chief financial officer shall assume the administrative procedures set forth in these rules.]

...

"Electronic funds transfer" means any method of transferring moneys permitted by this rule that does not involve the physical presentation of a paper check, including, but not limited to: wire transfers, e-checks, automated clearing house (ACH) transfers, and transactions initiated by phone or fax; **however, this term shall not include procurement cards.**

...
 "Permitted use" means such use of procurement cards or electronic funds transfers as are specifically permitted by [action of the governing body and the chief financial officer] **the policies and procedures of the local unit**, but in no case beyond the scope of use permitted by N.J.S.A. 40A:5-16(c) or these rules.

...
"Program manager" means an individual who is responsible for day-to-day oversight and management of procurement card usage. The program manager is responsible for overseeing all aspects of procurement card usage, including the management of supervisory review and reconciliation of activity.

5:30-9A.3 Authorization to use procurement cards and electronic funds transfers for the acquisition of goods and services

(a) The governing body of a contracting unit may adopt policies that permit its specifically named employees to use procurement cards or electronic funds transfers for the acquisition of goods and services under the circumstances set forth in N.J.S.A. 40A:5-16(c). Such policies shall be in writing and shall be approved by resolution of the governing body. Such policies shall not exceed the limits and requirements expressed in the following conditions:

1. The conditions **for advance payment** under N.J.S.A. 40A:5-16(c)(1), covering circumstances when payment to vendors is required in advance of the delivery of certain goods or services that cannot be obtained from any other source at comparable prices, are as follows:

i. An individual transaction shall not exceed 15 percent of the contracting unit's bid threshold **unless, in the case of a procurement card transaction, the contracting unit has a program manager who possesses a Qualified Purchasing Agent certification from the Division of Local Government Services, in which case the individual transaction limit shall be subject to the contracting unit's policies and procedures;**

ii-iv. (No change.)

2. The conditions under N.J.S.A. 40A:5-16(c)(2), relating to circumstances when ordering, billing, and payment transactions for goods or services are made through a computerized electronic transaction, are as follows:

i. Transactions occurring under these circumstances shall not exceed 15 percent of the contracting unit's bid threshold **unless, in the case of a procurement card transaction, the contracting unit has a program manager who possesses a Qualified Purchasing Agent certification from the Division of Local Government Services, in which case the individual transaction limit shall be subject to the contracting unit's policies and procedures;**

ii-iv. (No change.)

3. The conditions under N.J.S.A. 40A:5-16(c)(3), which permits local units to pay out moneys without requiring certification are as follows:

i. An individual transaction shall not exceed 15 percent of the contracting unit's bid threshold **unless, in the case of a procurement card transaction, the contracting unit has a program manager who possesses a Qualified Purchasing Agent certification from the Division of Local Government Services, in which case the individual transaction limit shall be subject to the contracting unit's policies and procedures;** and

ii. (No change.)

4. (No change.)

(b)-(c) (No change.)

5:30-9A.4 Conditions for use of procurement cards or electronic funds transfers; organization and access

(a) Contracting units shall meet the following requirements prior to implementing procurement card and electronic funds transfer programs:

1. The contracting unit shall adopt the appropriate administrative ordinance or resolution authorizing the [specific purposes for use of procurement cards] **policies and procedures governing the use of procurement cards** or electronic funds transfer consistent with the provisions of N.J.S.A. 40A:5-16(c) and limited by these rules. [Examples of specific purposes may include, and are not limited to, acquisition of office supplies with individual value of less than \$50.00, membership

dues, publication or subscriptions, auto parts and supplies with individual values of less than \$150.00, parts and repairs necessary for the comfortable occupancy of municipal buildings not to exceed \$500.00.]

2. The [chief financial officer, in consultation with the governing body or its designee, where applicable,] **program manager** shall [promulgate policies and procedures governing the use of procurement cards and] cause a copy of said policies and procedures to be distributed to each individual whose duties may at any time include the use of a procurement card, supervisory review, or reconciliation of activity.

3. The chief administrative officer, **in consultation** with the [advice and consent of the] chief financial officer **and the program manager if that individual is someone other than the chief financial officer**, will identify positions within the organizational structure that will benefit from the use of a procurement card and establish limits by amount, period (time), and category of usage permissible. The [CFO] **program manager** shall [identify an individual to conduct a] **develop and administer a supervisory review process** [of procurement card activity of these assigned individuals] **as well as engage in reconciliation of activity and any other oversight or management duties required to ensure the proper usage of procurement cards.** [In the case of officers of the contracting unit, a peer may conduct the supervisory review.]

(b) (No change.)

5:30-9A.5 Procurement card limit and control requirements

(a) A procurement card differs substantially from a credit card issued by a financial institution because of the controls that may be exercised by the contracting unit. Before selection of an issuer (and in addition to consideration of fees and rebates, software and computer requirements, and accessibility to the vendor), the following limits and controls shall be [available to and exercisable directly by the CFO or other management-level officers of the contracting unit] **incorporated into the procurement card program:**

1.-6. (No change.)

5:30-9A.7 Policies and practices governing use of procurement cards; audit

(a) The contracting unit shall ensure that the use of procurement cards is governed by sound fiscal and management controls. All policies and procedures shall be enforced to ensure that the contracting unit shall establish procedures regarding the use of procurement cards as follows:

1. All authorized procurement card users, individuals responsible for supervisory review, individuals responsible for activity reconciliations, the purchasing agent, **the program manager, the chief administrative officer**, and the CFO are required to complete training on the policies and procedures governing the use of procurement cards;

2. Procurement cards shall be issued in the name of a specific individual. Said individual, upon completion of the requisite training, shall complete and sign a contract of understanding that includes financial responsibility for misuse of the procurement card. A card shall not be issued unless it can be shown that such issuance is necessary for the conduct of ongoing operations in the normal course of providing government services.

3. Under no circumstance shall procurement cards be used to purchase personal property or services, including travel and dining expenses **for government employees, volunteers, or officials.** Existing law, N.J.S.A. 40A:5-16.1, provides mechanisms for employees to receive travel and expense funds in advance. **Subject to the authorization process and limits of this subchapter, procurement cards may be used by a Qualified Purchasing Agent of a county, or the County Sheriff or County Prosecutor if authorized by a resolution or ordinance of the governing body of the county, to arrange for travel, room, and board expenses of defendants, witnesses, or experts required for matters before the courts.**

4. A procurement card is not to be issued to an individual who is neither covered by a fidelity bond nor by a blanket honesty policy held by the contracting unit and shall be cancelled if a person to whom a procurement card is issued becomes ineligible for coverage under the fidelity bond or blanket honesty policy; and

[3.] 5. (No change in text.)

(b) The [CFO] **program manager** is responsible for the identification, analysis, and management of all risks associated with the use of procurement cards.

(c) (No change.)

(d) The [CFO , with the assistance of the purchasing agent,] **program manager** shall assure that the following information is gathered and reviewed prior to any disbursement of funds to the issuer:

1.-4. (No change.)

(e) [In addition to the annual assessment of internal controls conducted by the registered municipal accountant, the CFO] **The program manager** is responsible for monitoring and assessing the quality of internal control performance on a continuing basis to assure that all controls are actively pursued each cycle without exception.

(a)

DIVISION OF LOCAL GOVERNMENT SERVICES LOCAL FINANCE BOARD

Approval Process for Non-State Health Benefits Program Health Insurance Plans

Proposed New Rules: N.J.A.C. 5:30-18

Authorized By: Local Finance Board, Thomas H. Neff, Chair.

Authority: N.J.S.A. 40A:10-21.1.c.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2012-171.

Submit comments by January 18, 2013 to:

Patricia McNamara, Executive Secretary
Local Finance Board
Department of Community Affairs
P.O. Box 803
Trenton, New Jersey 08625-0803

The agency proposal follows:

Summary

The Local Finance Board proposes these new rules to implement the provisions of P.L. 2011, c. 78. The new rules are proposed simultaneously and in cooperation with the State Board of Education. The two agencies intend that their respective rules be interpreted and applied uniformly for all local government and district board of education employers and employees.

Pursuant to the authority vested in the Local Finance Board by N.J.S.A. 52:27BB-10 to implement the statutory provisions of N.J.S.A. 40A:10-21.1.c, the Board proposes new rules N.J.A.C. 5:30-18. This rulemaking is necessary to implement changes to the State Health Benefits Program (SHBP) and the School Employees' Health Benefits Program (SEHBP) enacted effective June 28, 2011 under P.L. 2011, c. 78 ("Chapter 78"), and to implement the cost comparison requirements for local employers electing not to participate in these programs.

On June 28, 2011, P.L. 2011, c. 78, was enacted. Section 42c of Chapter 78 permits local units to incorporate a non-State Health Benefits Program (hereinafter, "non-SHBP" plan) into a collective negotiations agreement (CNA) so long as the Division of Local Government Services (hereinafter, "Division") approves the local unit's certification that, over the term of a CNA, the non-SHBP plan achieves aggregate employer savings. This certification applies to any healthcare coverage offered by the local employer through a non-SHBP plan regardless of whether the local employer offers other healthcare benefits through SHBP.

The purpose of the proposed new rules is to ensure that the taxpayers realize the cost savings intended under Chapter 78, by establishing the criteria under which the cost savings comparison shall be made against the cost of these benefits when provided through the SHBP or SEHBP, as applicable.

Proposed N.J.A.C. 5:30-18.1 sets forth the purpose and scope of the chapter.

Proposed N.J.A.C. 5:30-18.2 sets forth necessary definitions. A definition of base salary is included, which is the standard upon which the

employee's contribution is calculated under Section 39 of Chapter 78, and, correspondingly, the basis for calculation of the costs under this Subchapter. Base salary continues to be defined in accord with guidance previously issued by the Division of Pensions and Benefits and Division of Local Government Services, as the same salary upon which pension contributions are calculated, but including salary in excess of Social Security maximum that is applied to pension contributions and excluding extra compensation.

Proposed N.J.A.C. 5:30-18.3 sets forth the certification method by which the local unit must demonstrate the aggregate employer savings. The section prescribes the required documentation that must accompany the certification, and when and how the certification is to be submitted to the Division. The certification requirement is triggered when a local unit proposes to enter into a contract with a collective bargaining unit to provide medical, dental, prescription drug, or any other health care benefit through a non-SHBP plan, regardless of whether the local unit previously offered such coverage or coverages through the SHBP or a non-SHBP plan.

Proposed N.J.A.C. 5:30-18.4 sets forth the methodology by which the Division will review, and ultimately approve or reject, certifications of aggregate employer savings by local units.

This rule proposal provides for a comment period of 60 days and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed new rules protect the public interest by seeking to control local unit health care costs, providing a process whereby those costs are not only monitored but also measured against an objective benchmark.

Economic Impact

The Board anticipates that the proposed new rules will have a positive fiscal impact on local units and the constituents they serve by enhancing fiscal accountability and efficiency. Requiring the local units to demonstrate aggregate employer savings will help control health insurance costs.

Federal Standards Statement

No Federal standards analysis is required because the new rules are not being proposed to implement, comply with, or participate in any program established under Federal law or under a State law that incorporates or refers to Federal law, standards, or requirements.

Jobs Impact

The Board does not anticipate the creation or loss of any jobs as a result of the proposed new rules.

Agriculture Industry Impact

The Board does not anticipate that the proposed new rules will have an impact on the agriculture industry.

Regulatory Flexibility Statement

The proposed new rules would affect all local units that propose to offer a non-SHBP plan through a CNA to provide health care benefits to its employees; and would not impose any reporting, recordkeeping, or compliance requirements on "small businesses" as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Housing Affordability Impact Analysis

The proposed new rules will have no anticipated impact on housing affordability because they pertain to the certification of aggregate employer savings for non-State Health Benefits Program health plans.

Smart Growth Development Impact Analysis

The proposed new rules will have no anticipated impact on housing production in Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan because they pertain to the certification of aggregate employer savings for non-State Health Benefits Program health plans.

Full text of the proposed new rules follows: