

**TITLE 2 PUBLIC FINANCE**  
**CHAPTER 60 INVESTMENT AND DEPOSITS OF PUBLIC FUNDS**  
**PART 8 ACCEPTANCE OF PAYMENT CARDS AND USE OF ELECTRONIC FUNDS**  
**TRANSFERS**

**2.60.8.1 ISSUING AGENCY:** State Board of Finance, 181 Bataan Memorial Building, Santa Fe, NM 87501.  
[2.60.8.1 NMAC - N, 8/31/2000; A, 8/14/2015]

**2.60.8.2 SCOPE:** State agencies with respect to acceptance of payment cards and all public bodies with respect to electronic fund transfers. These regulations do not apply to procurement cards issued to agencies for procurement of goods and services or to travel cards issued by the state general services department.  
[2.60.8.2 NMAC - N, 8/31/2000; A, 8/14/2015]

**2.60.8.3 STATUTORY AUTHORITY:**

**A.** Article IV, Section 30 of the New Mexico state constitution states that no money shall be paid out of the treasury except upon warrant drawn by the proper officer.

**B.** Section 6-10-1.2 NMSA 1978 provides that a state agency may accept payment by credit card or electronic means of any amount due the state under any law or program administered by the agency and that the state board of finance shall adopt rules on the terms and conditions of accepting payments by credit card or electronic transfer. A state agency may charge a uniform convenience fee to cover the approximate costs imposed by a financial institution that are directly related to processing a credit card or electronic transfer transaction. The fee shall be charged to the person using the credit card or electronic transfer, and amounts collected are appropriated to the state agency to defray the cost of processing the transaction.

**C.** Section 6-10-35 NMSA 1978 provides that the state board of finance may designate a bank or savings and loan association as the “fiscal agent of New Mexico” and to act as the agent of the state in fiscal matters generally, subject to the supervision and approval of the state board of finance.

**D.** Section 6-10-46 NMSA 1978 states that all payments and disbursements of public funds of the state shall be made upon warrants drawn by the secretary of finance and administration, upon the treasury of the state, based upon itemized vouchers in a form approved by the secretary of finance and administration.

**E.** Section 6-10-63 NMSA 1978 provides that any public money may be transferred by means of electronic fund transfer between any public body and a public or private entity and that the state board of finance shall adopt rules and regulations to carry out this purpose.  
[2.60.8.3 NMAC - N, 8/31/2000; A, 8/14/2015]

**2.60.8.4 DURATION:** Permanent.  
[2.60.8.4 NMAC - N, 8/31/2000]

**2.60.8.5 EFFECTIVE DATE:** August 31, 2000, unless a later date is cited at the end of a section.  
[2.60.8.5 NMAC - N, 8/31/2000]

**2.60.8.6 OBJECTIVE:** This rule provides general guidance regarding the financial and legal requirements for acceptance of payment cards through the state’s fiscal agent bank and any approved third-party processor and the use of electronic fund transfers.  
[2.60.8.6 NMAC - N, 8/31/2000; A, 11-27-2002; A, 8/14/2015]

**2.60.8.7 DEFINITIONS:**

**A.** “**Agency**” means each department, agency, branch, commission, and board of government of the state of New Mexico.

**B.** “**Board**” means state board of finance.

**C.** “**Electronic fund transfer**” means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.

**D.** “**Fiscal agent**” means the bank or savings and loan association designated as the fiscal agent of

New Mexico by the board.

**E. “Fiscal agent agreement”** means the agreement between the board and the fiscal agent that defines the terms, conditions, and procedures of the fiscal agent designation. The fiscal agent agreement includes a merchant agreement that addresses the terms and conditions for use of payment cards.

**F. “Payment card”** means a card, code, or other means of access to a consumer’s account for the purpose of initiating electronic fund transfers when the person to whom such card or other means of access was issued has requested and received or has signed or has used, or authorized another to use, such card or other means of access for the purpose of transferring money between accounts or obtaining money, property, labor, or services. Cards must be authorized and accepted by the fiscal agent per the state’s fiscal agent agreement and pursuant to current contracts between payment card companies and the board. Payment cards are linked to a cardholder’s deposit account, credit account, or loan account. Payment cards may include credit cards, debit cards, stored-value cards, and other similar cards.

**G. “Payment gateway”** means a service of the fiscal agent that allows members of the public to make payments by payment card to an agency using the agency’s website, via touch-tone or, where available, voice commands over the telephone.

**H. “Public body”** means any department, board, agency or instrumentality of the state, any county, city, town, village, school district, other district, educational institution or any other governmental agency or political subdivision of the state.

**I. “Third-party processor”** means a payment card processor of transactions on behalf of an agency that is not the fiscal agent.

[2.60.8.7 NMAC - N, 8/31/2000; A, 11-27-2002; A, 8/14/2015

#### **2.60.8.8 AGENCY RESPONSIBILITIES AND REQUIREMENTS FOR BOARD APPROVAL OF PAYMENT CARD ACCEPTANCE:**

**A.** Payment card services will be provided through the fiscal agent subject to the terms and conditions as set out in the fiscal agent agreement and the board’s agreements with individual payment card companies, through an agreement between an agency and a third-party processor if approved by the board, or through a statewide payment card acceptance system, if established.

**B.** Agencies requesting payment card acceptance shall submit to the director of the board a written request that contains the following:

- (1) reason for payment card services and the specific fees, taxes, or other amounts to be collected using payment cards;
- (2) confirmation that the agency has read and will follow the terms and conditions for payment card acceptance as set out in the fiscal agent agreement or statewide payment card acceptance system agreement, if established, and the board’s agreements with individual payment card companies;
- (3) confirmation that the agency will pay all costs associated with the acceptance of payment card services, including purchases or leases of merchant equipment, as set out in the fiscal agent agreement and any agreement with an approved third-party processor, and including any assessment charged by the state to cover the cost of compliance with payment card industry data security standards;
- (4) confirmation that the agency will be responsible for tracking, researching and recording all payment card transactions for reconciliation purposes;
- (5) confirmation that any acceptance of payment cards through the internet shall be done in a secure fashion and on a secure system;
- (6) confirmation in writing from the department of information technology that the agency’s acceptance of payment cards will meet data security standards of the payment card industry;
- (7) confirmation that the agency’s chief financial officer and chief information officer will cooperate with the board to ensure compliance with payment card industry data security standards;
- (8) whether the agency will absorb fees for acceptance of payment cards or cardholders will be assessed a convenience fee. If fees are to be paid by the cardholder, provide the procedures used to charge and collect convenience fees from cardholders and confirmation that the convenience fee will be in compliance with Subsection B of 6-10-1.2 NMSA 1978, as amended;
- (9) if the agency wishes to use a third-party processor, a copy of the third-party processor agreement with the agency and the reasons why use of a third-party processor is more advantageous for the agency than using the fiscal agent. If the third-party processor agreement with the agency is not yet available at the time board approval for acceptance of payment cards is requested, the board director may condition any approval on the board director’s later review and approval of the third-party processor agreement;

(10) if the agency wishes to use payment gateway through the fiscal agent agreement, a comparison of the costs and benefits of using payment gateway to traditional payment card services, including breakdown of fees to be paid by the board, the agency, and cardholders.

C. The board, in consultation with the fiscal agent, may, at any time, deny acceptance of payment cards by or revoke approval to an agency through the fiscal agent agreement. The reasons for denial or revocation may include, but are not limited to, the following:

- (1) cost effectiveness;
- (2) illegal or misuse of payment card transactions;
- (3) failure to adhere to the terms and conditions of these regulations, the fiscal agent agreement payment card industry data security standards, or the board's agreements with individual payment card companies;
- (4) repeated lapses in compliance or security.

D. Reasons for denial of use of a third-party processor may include, but are not limited to, the reasons specified in Subsection C of 2.60.8.8 NMAC. In addition, upon approval, the agency's agreement with the third-party processor must be approved by the board's director to ensure compliance with the fiscal agent agreement and the board's agreements with individual payment card companies. In the event there is no current agreement between the board and a particular payment card company, the board's director may authorize an agency's third-party processor to process payment cards issued by that company under the terms and conditions of the third-party processor's own contract with the company as long as there is no discount imposed on or deduction from the entire amount due and owing to the agency and paid by the cardholder (except for any convenience fee paid by the cardholder in addition to the amount owed), which amount shall be transferred by the third-party processor to the agency.

[2.60.8.8 NMAC - N, 8/31/2000, A, 11/27/2003; A, 7/15/2003; A, 8/14/2015; A, 01/16/2018]

#### **2.60.8.9 RESPONSIBILITIES FOR PAYMENT CARD ACCEPTANCE:**

A. The fiscal agent shall provide payment card services, upon written request by the director of the board, to any agency so requesting subject to the terms and conditions set out in the fiscal agent agreement and individual payment card company agreements with the board.

B. The charge to an agency for payment card services will be the fee designated in the fiscal agent agreement or that set out in the approved third-party processor's agreement. The fiscal agent shall bill the appropriate agency through separate invoices for card processing fees and applicable treasury management fees, if any, prepared by the fiscal agent in accordance with the relevant provisions of the fiscal agent agreement. At the end of each fiscal year, the fiscal agent shall submit a report to the board director summarizing the payment card fees and merchant equipment costs charged to each agency for that fiscal year. Each agency will be responsible for all fees as set out in any approved third-party processor's agreement with the agency. Each agency will ensure payments to service providers are timely and compliant with service agreement.

C. Agencies may be assessed an incremental charge to cover the cost of compliance with payment card industry data security standards.

D. Agencies shall comply with the following payment card industry data security standards vendor management requirements:

- (1) Maintain a current list of service providers handling cardholder data, including a description of the services provided;
- (2) Maintain a written agreement with service providers that includes an acknowledgement that the service providers are responsible for the security of cardholder data that the service providers maintain in possession or otherwise store, process or transmit on behalf of the agency. The written agreement must also acknowledge any action or procedure that the provider undertakes that may impact the security of the agency's cardholder data environment;
- (3) Establish and maintain a program to monitor the third-party service provider's payment card industry data security standards compliance status at least annually. This function will be performed by the State Treasurer's Office for services provided under the fiscal agent agreement;
- (4) Maintain documentation describing which payment card industry data security standards requirements are managed by each service provider and which are managed by the agency. The State Treasurer's Office will maintain documentation regarding payment card industry data security standards requirements for payment card services provided by the fiscal agent; and
- (5) Ensure compliance with any additional vendor management requirements mandated under subsequent releases of payment card industry data security standards requirements.

[2.60.8.9 NMAC - N, 8/31/2000; A, 11/27/2003; A, 8/14/2015; A, 01/16/2018]

**2.60.8.10 ELECTRONIC FUND TRANSFERS:**

**A.** Public bodies requesting authorization for use of electronic fund transfers must submit to the directors of the financial control division of the department of finance and administration and the board a letter explaining the reason for the use of electronic fund transfers and the fund for which it is to be used. Public bodies may only initiate electronic fund transfers after receiving written authorization by the financial control division of the department of finance and administration.

**B.** Electronic fund transfers can only occur after notification of the state treasurer's office of the amount of the transfer.

**C.** The state treasurer and each public body is responsible for the tracking of and the accounting for all electronic fund transfers. The reconciliation process is the responsibility of the public body and the financial control division of the department of finance and administration.

[2.60.8.10 NMAC - N, 8/31/2000; A, 8/14/2015]

**HISTORY OF 2.60.8 NMAC: [RESERVED]**