

Brian S. Colón, Esq., CFE | State Auditor

2019-2022 TERM REPORT



Accountability. Transparency. Excellence.

A MESSAGE FROM THE STATE AUDITOR



Queridos Nuevo Mexicanos,

Serving the Land of Enchantment as your State Auditor is a privilege I am grateful to fulfill every day. You have entrusted me to work on your behalf to ensure our state government works for you. As State Auditor, it is my job to weigh in on the financial health of our state government and to opine on matters of process, procedure, and compliance to safeguard your money as taxpayers.

Since day one, I have tackled allegations of waste, fraud, and abuse at every level with integrity and independence. I have been steadfast in my commitment to accountability, transparency, and excellence in government because it is my responsibility to protect New Mexico's tax dollars and by extension to protect New Mexicans. When I learned the state paid out millions of dollars in secret settlements, I took action, and now we have a new law that strengthens transparency in state settlements and improves accountability at all levels of government. When the citizens of a Northern New Mexico city contacted me about their concerns regarding city leadership, I took action, and now a former Mayor has been convicted of corruption. When I heard New Mexicans didn't feel like they had accessibility to this office, I took action and embarked on a 33-county tour and held open office hours in rural towns and villages, then seamlessly transitioned to virtual outreach during the pandemic, because I believe a well-informed public deserves to have an opportunity to have their voices heard. And when I initiated an innovative and groundbreaking examination into the relatively unregulated billing practices of Pharmacy Benefit Managers, I referred those findings to the New Mexico Attorney General which subsequently led to a \$13.7 Million settlement for vulnerable New Mexicans. I am pleased to present this report which highlights these and many other achievements over the past four years.

The Office of the State Auditor is critical in the fight against governmental waste, fraud and abuse, and I am proud of the work we have done and the work we continue to do; we are leading in every effort to support agencies statewide so they may operate soundly and effectively by establishing an ethical tone at the top and restore your faith in government.

I am honored to serve as your State Auditor, and truly value the opportunity to support accountability, transparency, and excellence in government throughout my term as State Auditor.

Sincerely,

A stylized, handwritten signature in blue ink, which appears to read "B. Colón".

BRIAN S. COLÓN, ESQ., CFE
New Mexico State Auditor

TABLE OF CONTENTS

About the Office of the State Auditor	4
Organization Chart	6
About the State Auditor	7
Accountability, transparency, and excellence in action	8
Financial Audit Division	14
Special Investigations Division	15
Government Accountability Office	16
Compliance and Regulation Division & Conservatorship Report Review Division	17
Administrative Division	18

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About the Office of the State Auditor

The New Mexico Office of the State Auditor is a constitutionally established executive office with an elected State Auditor eligible to serve up to two four-year terms.

AUTHORITY

The OSA is in the practice of public accountancy under New Mexico law and in accordance with the Audit Act,

Sections 12-6-1 to 12-6-14, NMSA 1978, the Office has two statutory purposes: (1) to ensure that the financial affairs of every agency shall be thoroughly examined and



audited each year by the State Auditor, personnel of the State Auditor's Office designated by the State Auditor or independent auditors approved by the State Auditor and (2) cause the financial affairs and transactions of an agency to be audited in whole or in part. § 12-6-3, NMSA 1978. These two statutory purposes grant the State Auditor the authority to conduct both financial and special audits. Furthermore, as of July 1, 2022, New Mexico's Probate Code provides that the OSA shall review every annual conservator's report filed with the Court.

Accountability

Those who govern should be accountable to those governed.

Transparency

Transparency provides openness and insight into decisions being made.

Excellence

We strive to set the standard for excellence in governance.

About the Office of the State Auditor



The OSA consists of 35 classified employees divided between five divisions and the Government Accountability Office.

The Financial Audit Division consists of 14 employees who are responsible for overseeing financial reporting and audit requirements of over 1,000 governmental entities. This work includes management of the tiered system of reporting. Which provides recommended entities to receive grant assistance to remain in compliance with the Audit Act. The division performs workpaper reviews of Independent Public Accountants on a yearly basis.

The Special Investigations Division consists of 6 employees who are responsible for conducting fact-finding regarding complaints of waste, fraud, and abuse in government and corresponding special audits and investigations of state and local government agencies. The division has the ability to conduct or direct a variety of audits including agreed upon procedures, performance audits, or any other special audits the State Auditor deems necessary.

The Compliance and Regulation Division consists of 3 employees who are responsible for ensuring compliance with all AICPA and GAGAS standards and updating the Quality Control Manual to ensure such compliance. Additionally, this team processes all audit contracts, handle public record requests, compile the Audit Rule, and oversee the approval of independent public accounting firms to conduct government audits.

The Conservatorship Report Review Division consists of 7 employees statutorily responsible for the review of all conservators' annual reports forwarded to the Office by the District Courts. Where deemed necessary, the division may conduct full audits of the contents of a conservator's report.

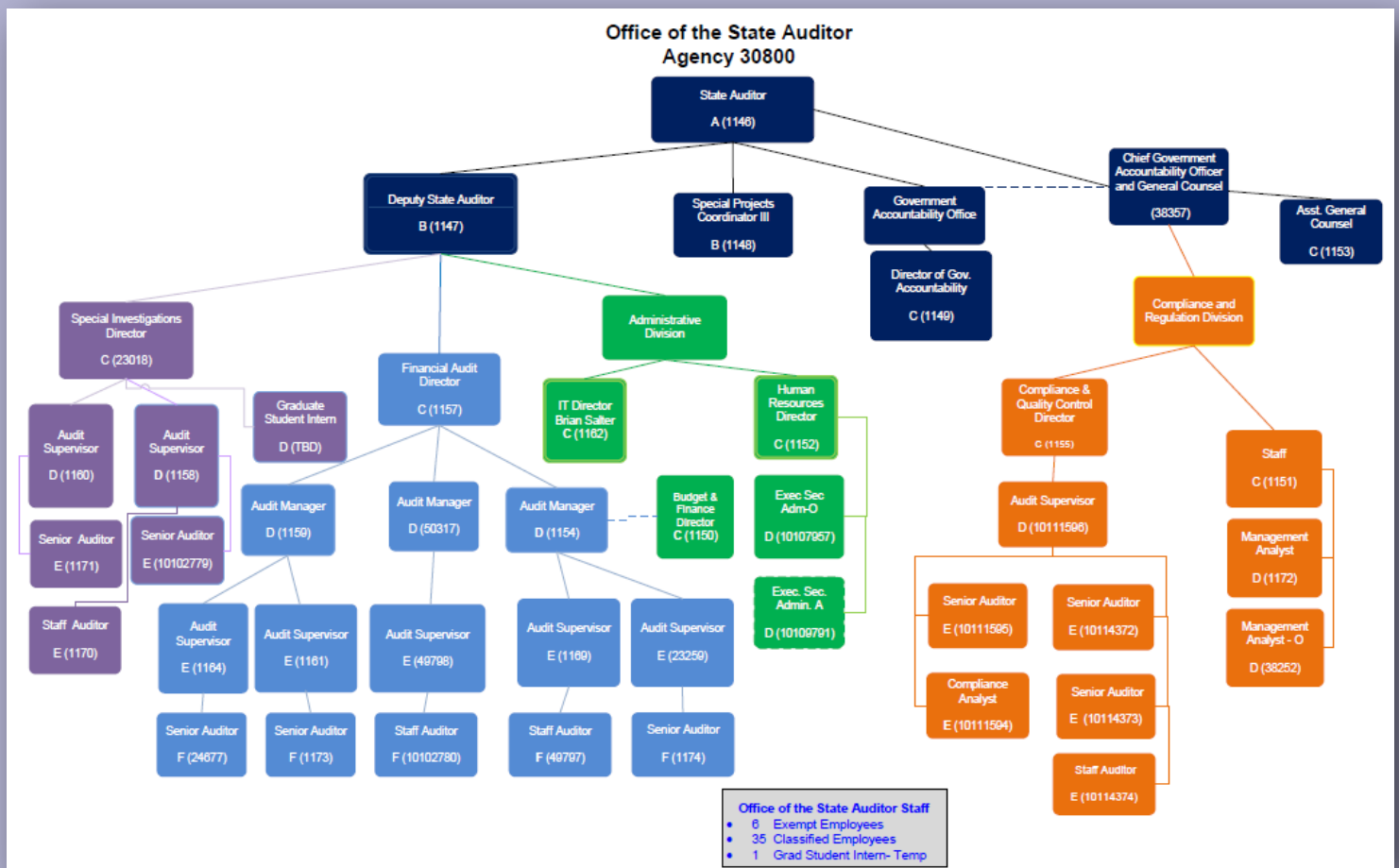
The Administrative Division consists of 5 employees who are responsible for managing the day-to-day operations of the Office. The division oversees the Office's budget, information technology, human resources, and provides general administrative support.

The Government Accountability Office (GAO) reports to the public on statewide issues relating to the use of public funds.

About the Office of the State Auditor



Operational Organization Chart





About the State Auditor

Brian Colón was elected the 28th State Auditor of New Mexico in November 2018. As State Auditor, Brian is committed to bringing awareness to the important work of the Office of the State Auditor.

Raised in Valencia County, Brian learned the value of hard work, determination, and the sustaining power of an optimistic attitude from his parents. Although he lost his father when he was a teenager, Brian has not forgotten the many lessons he received, particularly the importance of education.

The first in his family to go to college, Brian received his Bachelor's degree in Finance from New Mexico State University and later earned his law degree from the University of New Mexico School of Law. He has practiced law since 2001, but service and a deep desire to give back to the community have always been among his top priorities. Brian has been called a "force in fundraising" because he is able to inspire others to get involved. His evenings and weekends are spent helping countless local cultural and community-focused nonprofits raise money to support their causes, or meeting with the young women and men he mentors.

Brian knows firsthand the power of mentoring and the difference it can make in strengthening our communities. While he is a dedicated community ambassador and civil servant, Brian also truly treasures his family. Brian has celebrated 26 years of marriage with his bride, Aleli Colón, an educator and current doctoral candidate with a Civil Engineering degree and a Master's Degree in Mathematics. Together they have one son, Rafael, a graduate of Albuquerque High School and The George Washington University where he obtained a Biomedical Engineering Degree.



Accountability, Transparency, and Excellence in Action

Secret Settlements

In 2019, State Auditor Colón announced the launch of a special audit to conduct an investigative examination of \$1.7 million in settlement payouts by the General Services Department (GSD). The special audit was designated after the OSA was alerted to allegations concerning questionable expenditures and how GSD handled secure settlement payouts.



The special engagement provided GSD with insight into compliance with policies and procedures regarding certain settlement transactions that occurred during fiscal years 2015, 2018, and 2019 and made recommendations for improvements to the claim settlement process.

The findings included lack of documentation, excessive confidentiality periods, and unusual liquidated damages provisions.

The observations included as opportunities revealed checks issued prior to execution of settlement agreements, a clause requiring settlement funds to be used to repay personal debt, settlements paid prior to finalization of investigative report, lack of support for settlement amounts, and other important process recommendations.

The engagement, which reviewed a total of eighteen (18) specific claims settled by GSD during fiscal years 2015, 2018, and 2019, amounting to a total of \$5,025,000 disbursed by the Risk Management Division, to determine if settlements complied with statutes, regulations and policies and procedures, which resulted in a total of three (3) findings and twelve (12) observations.

The OSA worked closely with GSD in and as a result of the special audit the department updated its settlement process to ensure a thorough, documented process supports any funds disbursed.

Finding #:	Description:	Dollar Amount of Related Settlements:
CS 2019-001	Lack of Documentation in Settled Case Files	\$2,775,000
CS 2019-002	Extensions of Confidentiality Periods	\$2,100,000
CS 2019-003	Excessive Liquidated Damages Provisions	\$875,000

Accountability, Transparency, & Excellence in Action

Municipal Corruption

Upon information identified through a special examination in 2019, the Special Investigations Division directed the Independent Public Accountant to consider elevated risks and assess the potential loss to taxpayer dollars due to allegations of corruption by the now former Mayor and convicted felon, Tonita Gurule Giron.

The OSA worked with the Attorney General and law enforcement to ensure New Mexicans received justice.

“This conviction is about accountability, and I am proud of our work at the Office of the State Auditor that helped lead to this conviction,” said Auditor Colón. “The unique partnership that allows the State Auditor and the New Mexico Attorney General to work closely to ensure New Mexicans are protected from waste, fraud, and abuse helped secure justice for New Mexico’s families.”

Albuquerque Police Department

The OSA initiated an examination into the allegations of abuse concerning the management of police overtime practices with the Albuquerque Police Department (APD). As a result, and consistent with its statutory authority, the OSA designated the City of Albuquerque for a special audit related to APD overtime practices and internal controls

The special audit, designated by Auditor Colón, was performed contemporaneous to the OSA-SID examination, into abusive overtime practices, including potential criminal violations and the City of Albuquerque’s failures to provide timely notification on suspected fraud.

The results of the special audit highlighted a continued failure to provide oversight, monitoring and accountability by the City that resulted in abuse and contributed to the public’s mistrust.

The report further identified a severe breakdown and lack of internal controls which resulted in a fractured tone at the top and damaged the organizational culture as a whole.

Accountability, Transparency, and Excellence in Action

Mora County

A special audit to examine the misuse of funds and other questionable expenditures by Mora County and the Mora County Volunteer Fire Department identified nearly \$335,000 in unsubstantiated and questionable expenditures as well as numerous potential violations of law and policies including: fraud, forgery, embezzlement, possible kickbacks, and possible violations of both the New Mexico Governmental Conduct Act and the Anti-Donation Clause of the NM State Constitution.

The IPA contracted to perform the engagement noted 25 findings concerning fraud risk including substantial funds unaccounted for as well as diverted funds leading to potential embezzlement. Items such as luxury flooring and approximately \$18,000 on the purchase of boots as well as potential invoice and payroll fraud was identified.

The test work performed proved to be difficult due to hinderances including lack of documentation and difficulty finding necessary documentation for five fiscal years. The Special Audit Report notes deeply troubling and potentially criminal attempts to conceal financial and personnel files and documentation. As a result, the OSA has referred the Special Audit Report, which lists all 25 findings to New Mexico State Police and the Office of the Fourth Judicial District Attorneys Office.

Otero County

The OSA conducted fact finding procedures, reporting the results to Otero County leadership, following reports alleging the County may have misspent government funds for the purpose of an audit of the County's 2020 General Election.

Following a thorough review of documents received from the County, and review of public meetings regarding the procurement, the OSA identified potential compliance issues and violation of law including deficiencies to properly oversee the procurement of contractual agreements and a lack of proper oversight policies for contract compliance. Abuses of power by the County Commission, in approving the contract with the vendor for an election audit not in the best interest of constituents, and seemingly political grandstanding. The OSA's SID concluded that contracting for an election audit amounted to a careless and extravagant waste of public funds, which did not appear to serve any useful purpose to the taxpayers of Otero County. Nearly \$50,000 of public funds were awarded with a significant amount refunded following the OSA examination.



Accountability, Transparency, and Excellence in Action

Americans with Disabilities Parking Lot Facility Compliance Audit

On the heels of the 31st Anniversary of the Americans with Disabilities Act, State Auditor Colón announced the results of special agreed upon procedures regarding the American with Disabilities Act Parking Facility Compliance (ADA Compliance). The special procedures performed were part of the OSA's commitment toward more equitable access to civic life for people with disabilities. A survey of facilities is an essential action item in determining whether there are physical barriers to access services. This report is demonstrative of the State's commitment to diversity, inclusion, and equity by ensuring accessibility is part of the conversation.

Following the results of the audit, Governor Michelle Lujan Grisham approved additional funding for ADA compliance and preventative maintenance of GSD buildings.



"All New Mexicans should have equal access to their government, and that means physical spaces such as buildings owned by the state of New Mexico," Colón said.

Pharmacy Benefit Managers

In early 2020, State Auditor Brian Colón initiated an investigation of the Pharmacy Benefit Managers (PBMs) that have provided services to the five New Mexico Medicaid Plans and the PBM for the State Group Benefit Plan for public employees. During the course of the investigation, Auditor Colón referred aspects of certain findings to Attorney General Hector Balderas which resulted in a \$13.7 Million settlement with Centene Corporation.

"For more than a decade, PBMs operated in a relatively unregulated environment enabling opportunities to develop abusive billing practices," said Auditor Colón. "In 2020 my Office took an innovative approach and launched an investigation into the billing practices by PBMs, together with the assistance of both the Human Services Department and the General Services Department. I am pleased to see the groundbreaking work by the Office of the State Auditor and referral to Attorney General ultimately resulted in the recovery of millions for vulnerable New Mexicans "

Accountability, Transparency, and Excellence in Action

Martin Luther King Jr. Commission

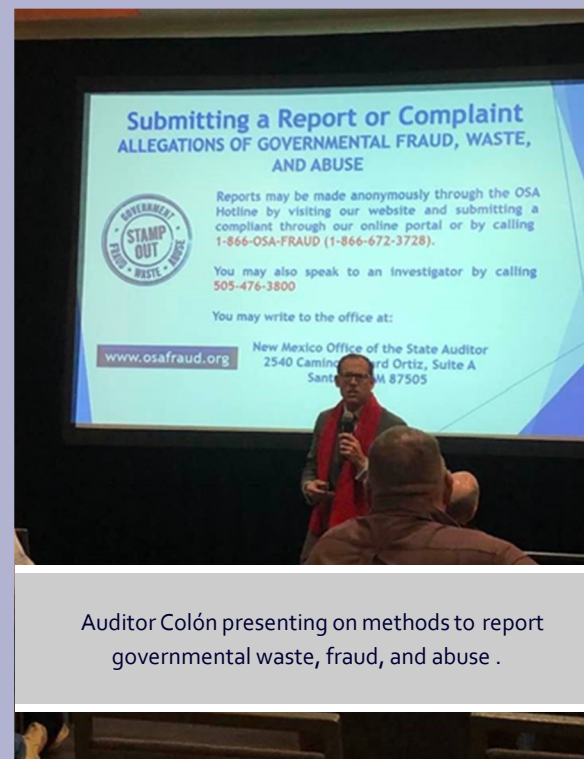
Following the OSA's consistent practice of intentional oversight, for the first time in multiple consecutive years of falling on the OSA's "At Risk List", The Martin Luther King Jr. Commission has been removed from the list.

The Commission, charged with the development, promotion, coordination, and review of statewide plans and activities for the annual commemoration and celebration of the birthday of Martin Luther King, Jr., was on shaky ground concerning the status of its annual audits for several years and has long been afflicted with pervasive and troubling issues which included inadequate policies and procedures, and a lack of internal controls. Due to the OSA's efforts, the Commission, with the aid of the Attorney General, resolved a number of widespread findings pertaining to insufficient governance and management.

The effort and dedication in addressing and correcting these findings must be acknowledged as these results demonstrate accountability, transparency, and restoration of public trust.

Metropolitan Detention Center

A fraud examination and forensic audit performed by an IPA identified nearly \$16,000 from the Metropolitan Detention Center in misappropriated Inmate Trust Account. Findings illustrated a significant breakdown of internal controls that resulted in possible embezzlement and fraud through the



issuance of debit cards and use of misappropriated inmate funds that appear to have been converted.

The forensic audit was reviewed with Bernalillo County officials who provided responses to the findings identified and immediately introduced corrective action measures.

Accountability, Transparency, and Excellence in Action

City of Santa Fe

As worsening fiscal mismanagement led to conditions that precluded the audit from being completed, the OSA announced plans for financial intervention for the City of Santa Fe. This comes more than a year after the OSA first notified the City of the OSA's significant concerns regarding the results of prior year audit reports and other compounded financial matters.

The conditions include a high risk audit environment, together with the City's failure to reconcile cash, which caused the City's independent public accounting firm to withdraw from the annual audit engagement for fiscal year 2021. The City remains on the OSA's At-Risk List due to the late audit report for FY21, which was due in December 15, 2021.

The City's failure to prioritize audit timeliness or take years of concerns raised by Auditor Colón seriously necessitate the intervention approach to support overall economic stability and prevent further financial crisis to the City, including risks associated with potential noncompliance concerning federal funds, credit downgrades and bond ratings, public health and safety concerns.

The City's pervasive issues, including approximately \$5 million dollars in unreconciled cash, have created conditions that leave the City unauditible. As a result the OSA engaged the Department at Finance (DFA) and its Local Government Division (LGD) to discuss a path forward to fix the City's broken financial situation.



"When the City management failed to make the decision to seek guidance and assistance, after repeated warning from me, I engaged the Department of Finance and Administration's Local Government Division to provide the guidance and assistance the City so urgently required. As State Auditor I have done everything within my power to drive transparency and hold the City of Santa Fe accountable." Auditor Colón

Financial Audit Division

The financial audit division plays critical role in overseeing the financial reporting requirements of entities subject to the Audit Act and ensuring the information made public is accurate and complete.

Financial Statement Audits

Annually, OSA financial audit division (FAD) team members perform a limited number of audit engagements. Due to the limited resources of the OSA and revenue controls set by statewide pricing agreements, audit fees generated by the FAD account for approximately 9% of the entire OSA budget.

A significant majority of annual financial audits are conducted by independent public accounting firms (IPAs) with the OSA providing direct oversight to ensure all engagements performed are in accordance with the Audit Rule and professional standards. FAD team members maintain the oversight functionality through robust report review process and annual workpaper reviews.

FY21: 98%

FY20: 97%

FY19: 96%

FY18: 96%

STEADY FINACIAL HEALTH:

Statistically, New Mexico audited agencies' financial reporting health is strong. On average 97% of agencies have received Unmodified Opinions suggestive of conformity in maintaining financial statements free from material error and may be relied upon.

Tiered System Reporting

Many local public bodies, such as mutual domestic water consumer associations, land grants, incorporated municipalities, and special districts pursuant to Sections 12-6-2(B) and Sections 12-6-3 (B) NMSA 1978 may be subject to different types of financial reporting

Tiers of Financial Reporting

Less than
\$10,000 in
revenue

> \$10,000
< \$50,000 in
revenue

< \$50,000 in
revenue and
spends 50%
or remainder
of capital
outlay award

> \$50,000
< \$250,000 in
revenue (no
capital outlay
expenditures)

> \$50,000
< \$250,000 in
revenue (plus
any capital
outlay
expenditures)

> \$250,000
< \$500,000 in
revenue

requirements. The tiered system of reporting was developed and implemented to assist small political subdivisions and local public bodies remain compliant with reporting requirements through a tiered certification process.

There are four (4) steps local public bodies must follow to determine their financial reporting requirements necessary for compliance with the Audit Rule. Full details and downloadable step by step instructions can be found using the link below.

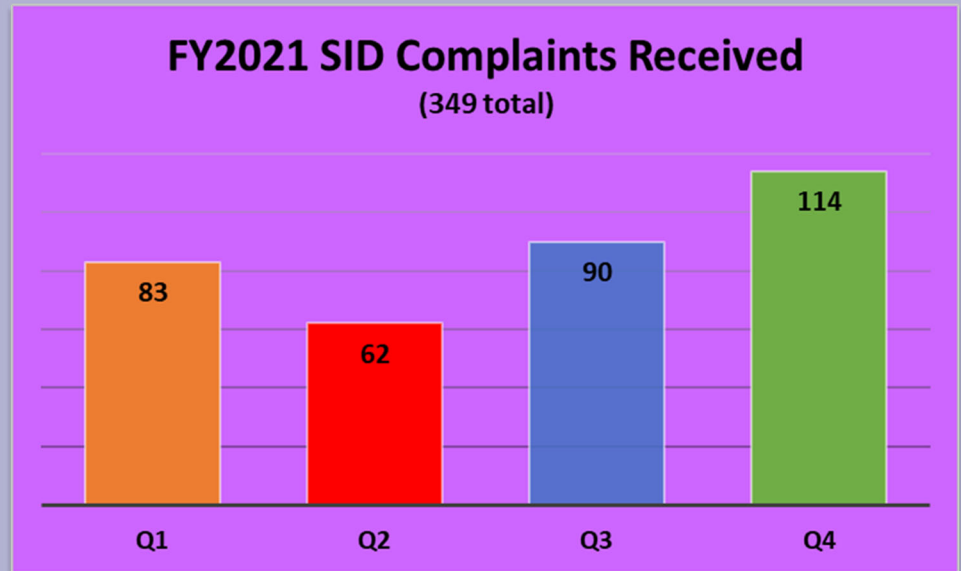
<https://www.saonm.org/tiered-system-reporting/>

Special Investigations Division

The Special Investigations Division (SID) is responsible for conducting special audits and investigations of state and local government agencies. The division has the ability to conduct or direct a variety of audits including agreed upon procedures, performance audits, or any other special audits the State Auditor deems necessary. This division also oversees a hotline that allows the public to report allegations of financial waste, fraud, and abuse. This tool allows individuals to report 24 hours a day, seven days a week either on the record or anonymously.

In 2019, 32% of all SID examinations were backlogged, since then the division has closed the gap on the backlog. In addition, the division has received over 1,200 reports of

alleged waste, fraud, and abuse and has completed nearly 1,000 examinations while continuing to steadily work to ensure reports are reviewed in a timely and thorough manner, eliminating examination backlogs.



FY21 Complaints Received: In some instances, a single examination may incorporate numerous complaints/reports of waste, fraud, and abuse.



SUBMITTING A REPORT OR COMPLAINT ALLEGATIONS OF GOVERNMENTAL WASTE, FRAUD, AND ABUSE

Reports may be made anonymously through the OSA Hotline by visiting our website and submitting a complaint through our online portal at www.osafrad.org or by calling 1-866-OSA-FRAUD (1-866-672-3728).

You may also speak to an investigator by calling 505-476-3800

You may write to the office at:

New Mexico Office of the State Auditor
2540 Camino Edward Ortiz, Suite A
Santa Fe, NM 87505

Government Accountability Office



The GAO is an office within the OSA uniquely positioned to aggregate the information it receives through the hundreds of financial audits and examinations into useful resources for all OSA stakeholders.

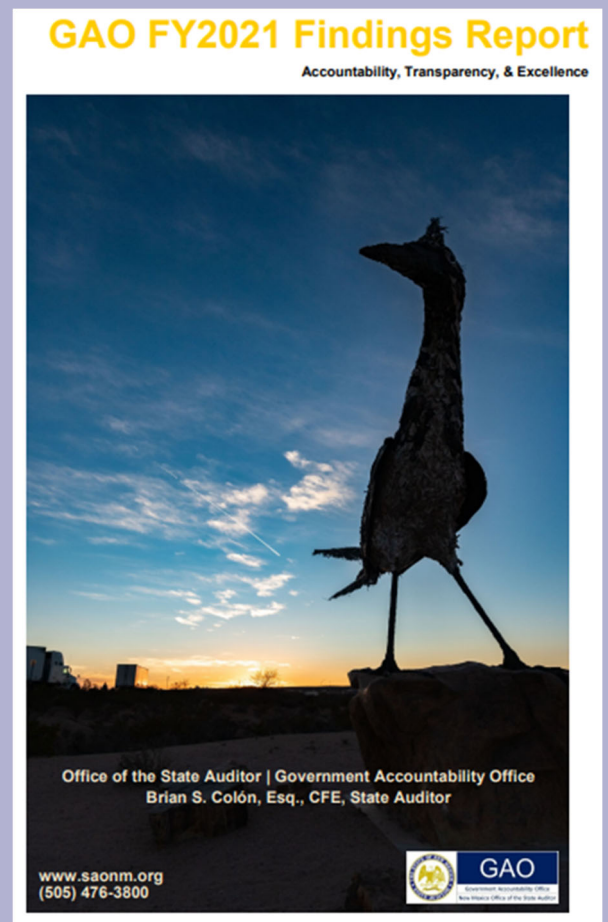
While the Financial Audit Division and the Special Investigation Division focus on efficiencies and effectiveness the GAO focuses on equity. The GAO is responsible for translating the technical information found in financial audit reports produced by New Mexico



state and local entities each year, making the information and data presented more accessible and understandable by the general public.

The GAO regularly produces reports, risk advisories and reviews, and bulletins. The purpose of each of the publication is to provide objective, fact- based information that is fair, balanced, and non-ideological. The work is reflective of its commitment to good government and its core values of providing excellence in transparency, accountability, integrity, and reliability.

The GAO is also the press center for the OSA and is responsible for creating transparent and concise communication between the media, the public, and government organizations.



Compliance and Regulation & Conservatorship Report Review Division

The Compliance and Regulation Division is responsible for updating report review guides for both OSA auditors and IPA's. The Division is also responsible for establishing, creating, updating, and maintaining a Quality Control Policies and Procedures Manual to ensure compliance with all AICPA and GAGAS standards. Additionally, this division processes all audit contracts, handles public records requests, updates the Audit Rule, and oversees the approval of independent public accounting firms to conduct government audits. In addition, this division houses quality control and the conservatorship team and is overseen by legal counsel for the OSA. As of July 1, 2022, New Mexico's Uniform Probate Code provides that the OSA shall review every annual conservator's report filed with the District Courts.

The newly established conservatorship report review & audit division within the OSA has developed a robust system for reviewing conservators' reports and the OSA was honored to increase the ways in which we serve New Mexico, to both satisfy the intent of the new statutory provision and to serve the needs of some of the most vulnerable New Mexicans that exist.

Report Reviews

Paragraph (H) of NMSA 1978, Section 45-5-409 provides the court shall forward all conservators' annual reports to the Office of the State Auditor for review within five business days of receipt of the report. The OSA team then reviews each report filed by a conservator, provides recommendations, and decides whether a full audit is necessary.

Within fifteen business days of receiving a report from the court, OSA submits either a letter declining to conduct a full audit or a letter of acceptance to conduct an audit. If OSA decides to conduct an audit of the contents in the report, an audit report must be filed with the court within ninety calendar days of filing an acceptance for an audit. The OSA is excited to continue to develop and grow in this area to meet the needs that exist.



Since the law went into effect July 1, 2021 the OSA has reviewed
nearly 1,900 conservators'
annual reports.

Administrative Division

The Administrative Division consists of the Human Resources (HR), Information Technology (IT), Budget and Finance, and Contracting Departments. The division works to be an innovative backbone for the OSA and the delivery of services, such as the partnership between IT and Contracting to make enhancements to OSA-Connect.

INFORMATION TECHNOLOGY

This department oversees the installation and management of computer networks, ensuring the proper function of systems like OSA-Connect, the portal used for firm profiles and contracting that is utilized by OSA, state agencies, and Independent Public Accountants for secure communications.

CONTRACTING

Procuring contracts is a yearly requirement for all agencies across New Mexico who receive and expend public money and that fall under the Audit Act. Agencies obtain contract services through small purchase bid or sealed request for proposal process and contract on a yearly basis for a full financial compliance audit, agreed upon procedures, or a certification for local public bodies below certain revenue thresholds.

HUMAN RESOURCES & ADMINISTRATION

HR serves as a link between OSA team members and the executive team by managing, planning, and directing administrative functions for the office. Overseeing oversees recruitment, hiring, training and development, payroll and benefits, risk management, and employee engagement that promote a happy, healthy and safe workplace.

The OSA-Connect Online Portal is for contracting and communicating with the OSA. The portal was created to easily contract for yearly financial compliance audits, agreed-upon procedures (AUP), tier certification compliance and keeping contact information up to date.

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2019-2022 TERM REPORT

STATE OF NEW MEXICO OFFICE OF THE STATE AUDITOR

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For more information on the
New Mexico Office of the State Auditor
please visit www.saonm.org



GAO

Government Accountability Office
New Mexico Office of the State Auditor

GAO Director, Stephanie W. Telles

