



State of New Mexico Office of the State Auditor

RULEMAKING RECORD

Pursuant to the State Rules Act, NMSA 1978, Section 14-4-1, *et. seq.*, and in conclusion of the rulemaking for the 2023 Audit Rule, 2.2.2 NMAC, effective March 28, 2023, the Office of the State Auditor provides this rulemaking record.

Publications in the New Mexico register relating to the 2023 Audit Rule, which repealed and replaced the 2022 Audit Rule:

- 2023 Audit Rule, 2.2.2 NMAC, which had an effective date of March 28, 2023
 - a. Adopted Rules, New Mexico Register, Issue 6 | New Mexico State Records Center and Archives:
<https://www.srca.nm.gov/nmac/nmregister/xxxiv/2.2.2.html>
 - b. 2023 Audit Rule Direct Link: <https://www.saonm.org/wp-content/uploads/2023/04/2.2.2-NMAC-Effective-Date-March-28-2023.pdf>
- 2023 Notice of Proposed Rulemaking and Public Hearing
 - a. Notices of Rulemaking, New Mexico Register, Issue 2 | New Mexico State Records Center and Archives:
https://www.srca.nm.gov/nmac/nmregister/xxxiv/OSAnotice_xxxiv02.html
- 2023 Amended Notice of Proposed Rulemaking and Public Hearing
 - a. Notices of Rulemaking, New Mexico Register, Issue 3 | New Mexico State Records Center and Archives:
https://www.srca.nm.gov/nmac/nmregister/xxxiv/OSAnotice_xxxiv03.html
- 2022 Audit Rule, 2.2.2 NMAC, which had an effective date of March 22, 2022
 - a. Adopted Rules, Issue 6 | New Mexico State Records Center and Archives
<https://www.srca.nm.gov/nmac/nmregister/xxxiii/2.2.2.html>
 - b. 2022 Audit Rule Direct Link: <https://www.saonm.org/wp-content/uploads/2022/03/2.2.2-032222.pdf>

Technical information relied upon in formulating the Audit Rule:

- To the extent applicable, the full text for relevant technical information that served as a basis for proposed changes is available at the following sites:
 - a. American Institute of Certified Public Accountants (AICPA) Standards –
<https://us.aicpa.org/research/standards>
 - b. Government Accounting Standards Board (GASB) –
<https://gasb.org/page/PageContent?pageId=/standards-guidance/pronouncements.html>

Office of the State Auditor

- c. U.S. Government Accountability Office (GAO) – Government Auditing Standards, (Yellow Book) 2018 Revision, April 2021 Technical Update – https://gaoinnovations.gov/yellowbook/GAO-21-368G_713761.pdf
- d. NMSA 1978, 61-28B-1, *et. seq.*, the New Mexico Public Accountancy Act – <https://nmonesource.com/nmos/nmsa/en/item/4397/index.do#!b/a28B>
- e. Office of Management and Budget - Circulars | The White House – <https://www.whitehouse.gov/omb/information-for-agencies/circulars/>

Video recording of the hearing:

- The public hearing on February 28, 2022, at 1:00 p.m. was recorded and can be viewed from the following links:
 - a. <https://www.saonm.org/auditing/financial-audits/state-auditor-rule/>
 - b. Direct link – <https://www.youtube.com/watch?v=pQdxckGK30g>

Comments received during the public comment period and at the public hearing:

- The Office of the State Auditor received four public comments during the public comment period from January 31, 2023, to March 2, 2023, which can be found [here](#) and are attached as **Exhibits 1-4**.
- There were two comments made during the public hearing; a transcription of those comments is attached as **Exhibit 5**.

Full text of the initial proposed rule, full text of the final adopted rule, and the concise explanatory statement filed with the state records administrator:

- Full text of the initial proposed rule is available on the OSA website at <https://www.saonm.org/auditing/financial-audits/state-auditor-rule/>
 - a. Direct link – <https://www.saonm.org/wp-content/uploads/2023/03/2023-Proposed-Audit-Rule-2.2.2-NMAC-with-proposed-changes-noted.pdf>
- Full text of the final adopted rule is available on the OSA website at <https://www.saonm.org/auditing/financial-audits/state-auditor-rule/>
 - a. Direct link – <https://www.saonm.org/wp-content/uploads/2022/03/2.2.2-032222.pdf>
- Concise Explanatory Statement is attached as **Exhibit 6**.

From: [Charlene Romero](#)
To: [Liza Kerr](#)
Cc: [Jason Clack](#)
Subject: Comments re: proposed Audit Rule changes
Date: Wednesday, February 1, 2023 11:20:51 AM

Good morning,

NMSA 6-10-3 addresses payment of state money and requires all public money to be deposited to the state treasury by the close of the next succeeding business day. This statute specifically refers to money that is to be remitted to the state treasurer.

There are separate statutes that address deposit of money received by the courts.

District Courts

NMSA 34-6-36 requires all litigant funds to be deposited within two working days after receipt. NMSA 34-6-37 requires all fines, fees, costs and money not required to be deposited into the clerk trust account to be deposited within two working days after receipt by the clerk.

Magistrate Courts

NMSA 35-7-5 states that "All money collected by a magistrate court in connection with civil and criminal actions is public money of the state held in trust by the district court within the same judicial district until disbursed in accordance with law." NMSA 35-7-5(B) requires deposit of all public money within two banking days after its receipt. NMSA 35-7-4 requires each magistrate court to remit all fines, costs and forfeitures collected by the court during the previous month to the AOC by the date established by the AOC Director. Unlike the statutes that govern the district courts, NMSA 35-7-5 does not require separate accounts for trust funds (cash bonds) and fines, fees and costs that are to be remitted to the state, through AOC.

Since there are conflicting statutory requirements regarding deadlines for deposit, we would like to receive some clarification regarding the statute(s) that control the deposit requirements for money received by the courts. If the requirements in Chapters 34 and 35 control the requirements for the courts, we would respectfully request that the 2023 Audit Rule make an exception for deposit requirements in NMSA 6-10-3 when there are separate statutes that outline requirements for specific entities, such as the courts.

Please feel free to let me know if you have questions or require additional information. Thank you for your assistance.
Charlene

Charlene Romero
Internal Auditor Supervisor
Court Operations Division
Administrative Office of the Courts
(505) 490-5149

MICHELLE LUJAN GRISHAM
GOVERNOR



SARITA NAIR
SECRETARY

HOWIE MORALES
LT. GOVERNOR

STATE OF NEW MEXICO
DEPARTMENT OF WORKFORCE SOLUTIONS
401 Broadway, NE
PO Box 1928
Albuquerque, NM 87103
(505) 841-8405/ FAX (505) 841-8491

February 8, 2023

The Honorable Joseph M. Maestas, P.E.
New Mexico State Auditor
2540 Camino Edward Ortiz, Suite A
Santa Fe, NM 87507

RE: Change – Report Due Date – BU 63100 Department of Workforce Solutions

Dear State Auditor Maestas,

The Department of Workforce Solutions (DWS) would like to request an amendment to 2.2.2 NMAC, Requirements for Contracting and Conducting Audits of the Agencies (“Audit Rule”) related to the due date of our annual financial audit report. Per the Audit Rule Section 2.2.2.9 (A)(1)(c), DWS’s report due date is November 1. DWS would like to request an amendment to the Audit Rule to move our report due date to subsection 2.2.2.9 (A)(1)(d) to November 15. DWS is a relatively large and complex state agency very similar to agencies listed in subsection 2.2.2.9 (A)(1)(d). Below are facts about DWS operations:

- DWS hosts and maintains the Unemployment Insurance (UI) Application System – this system is the infrastructure system used to provide UI benefit payments to claimants, and the collection of unemployment taxes from employers.
- DWS issues its own warrants (H and V warrant) separate from the Department of Finance and Administration. H warrants are used to issue employer refunds and V warrants are used to issue UI claimant payments. DWS issues approximately 12,000 H and V warrants annually and is operated by a specialized UI Treasury team.
- DWS federal expenditures are more than \$542.4 million dollars of which \$452.8 relate to UI claims and administration.
- DWS annual operating budget is \$122 million and our budgeted full time equivalent (FTE) is 743.5 employees.
- DWS has been deemed to be a large state agency by the New Mexico State Personnel Office.

Your consideration of our Audit Rule amendment request is greatly appreciated, and I look forward to your response. If you have any questions, please contact Nicholas Reed, Chief Procurement Officer at nicholas.reed@dws.nm.gov.

Sincerely,

Sarita Nair
Cabinet Secretary

cc: Nicholas Reed, Chief Procurement Officer

From: [Geisler, Greg, DCA](#)
To: [Liza Kerr](#)
Subject: Comment on Audit Rule
Date: Wednesday, March 1, 2023 4:21:18 PM

Good afternoon,

I would suggest that the proposed change to section 2.2.2.8(F)(8)(d) moving the date for audit contract submittal from June 1 to May 1 is unnecessary. If agencies are interested in audit fieldwork starting prior to the end of the fiscal year they are free to submit prior to June 1 under the current rule. Also, agencies that are going out to RFP for audit services will be under additional pressure to compress that process in order to meet the earlier deadline.

Greg Geisler
CFO/ASD Director
New Mexico Department of Cultural Affairs

From: [Bone, Matthew](#)
To: [Liza Kerr](#); [Beltran-Schmitz, Laura](#)
Subject: proposed rule changes
Date: Friday, March 3, 2023 8:48:04 AM
Attachments: [image001.png](#)
[image002.png](#)

Liza – I apologize for the late response on the draft rule, but we do have some questions regarding the AB. Annual Reports section, point 2.

- This states IPA’s are to review the performance measures submitted to the LFC, which does that indicate the agencies are required to include this now in their annual reports as well?
- Is this to be done in accordance with au-c 720 similar to point 1?
- When are these submitted to the LFC? Are there issues with timing of these and the audit itself?
- The scope of what is being asked of the IPA is vague. What is expected by “review” and are these expectations in conflict with 720, which are not providing any assurance with other information?

statewide ACFR for the state’s net OPEB liability and other OPEB-related information.

AB. Annual Reports: are defined as A document, or combination of documents, typically prepared on an annual basis by management or those charged with governance in accordance with law, regulation, or custom, the purpose of which is to provide owners (or similar stakeholders) with information on the entity’s operations and the entity’s financial results and financial position as set out in the financial statements. An annual report contains, accompanies, or incorporates by reference the financial statements and the auditor’s report thereon and usually includes information about the entity’s developments, its future outlook and risks and uncertainties, a statement by the entity’s governing body, and reports covering governance matters. Annual reports include annual reports of governments and organizations for charitable or philanthropic purposes that are available to the public.

- (1) IPA’s are required to review any annual reports in accordance with AU-C 720.
- (2) IPA’s are to review the **performance** measures submitted to the legislative finance

committee.

Reporting

.24 At the date of the auditor's report, when the auditor has obtained all the other information, the composition of which was determined through discussion with management and for which the auditor obtained management's written acknowledgment (pursuant to paragraph .13a), the auditor should include a separate section in the auditor's report on the financial statements with the heading "Other Information" or other appropriate heading. The "Other Information" section in the auditor's report on the financial statements should include the following: (Ref: par. .A56)

- a. A statement that management is responsible for the other information
- b. An identification of other information and a statement that the other information does not include the financial statements and the auditor's report thereon
- c. A statement that the auditor's opinion on the financial statements does not cover the other information and that **the auditor does not express an opinion or any form of assurance thereon**
- d. A statement that, in connection with the audit of the financial statements, the auditor is responsible to read the other information and consider whether a material inconsistency exists between the other information and the financial statements or the other information otherwise appears to be materially misstated
- e. A statement that, if, based on the work performed, the auditor concludes that an uncorrected material misstatement of the other information exists, the auditor is required to describe it in the auditor's report
- f. If the auditor has concluded that an uncorrected material misstatement of the other information exists, a statement that the auditor has concluded that an uncorrected material misstatement of the other information exists and a description of it in the auditor's report



Matt Bone, CPA, CGMA, CGFM
Managing Principal - New Mexico

Direct 505-222-3575 Mobile 505-453-6000
CLA (CliftonLarsonAllen LLP)
matthew.bone@CLAconnect.com

We'll get you there.

[CPAs](#) | [Consultants](#) | [Wealth Advisors](#)

[Send me your files with secure file transfer.](#)

CLA (CliftonLarsonAllen LLP) is an independent network member of CLA Global. See [CLAGlobal.com/disclaimer](https://www.claglobal.com/disclaimer). Investment advisory services are offered through CliftonLarsonAllen Wealth Advisors, LLC, an SEC-registered investment advisor.



The information (including any attachments) contained in this document is confidential and is for the use only of the intended recipient. If you are not the intended recipient, you should delete this message. Any distribution, disclosure, or copying of this message, or the taking of any action based on its contents is strictly prohibited.

CliftonLarsonAllen LLP

JOSEPH M. MAESTAS, P.E.
STATE AUDITOR



RICKY A. BEJARANO, CPA, CGMA
DEPUTY STATE AUDITOR

State of New Mexico Office of the State Auditor

I. Public comments made at the public hearing for the 2023 Audit Rule rulemaking:

1. Stephanie Yara, Director of Finance and Administrative Services for the City of Albuquerque, at the 14:37 mark of the Audit Rule rulemaking hearing (available at <https://www.youtube.com/watch?v=pQdxckGK30g>):

“We do appreciate your consideration of changes to 2.2.2.10(A) and 2.2.2.12(B) regarding public housing agencies as they relate to component units of local governments. We would appreciate that they be required to use the same auditor as the primary governments. It would help us to coordinate and deliver our audit on time and also help us to assist the housing authority with issues they may have.

“We also appeal to you as well to keep the contract date at June first instead of May first. We do go through a pretty lengthy RFP process, and that might have some effect on the City of Albuquerque’s being able to meet that requirement. We thank you for your consideration.”

2. Jim Williamson, CFO, Office of the State Engineer, at the 17:32 mark of the Audit Rule rulemaking hearing (available at <https://www.youtube.com/watch?v=pQdxckGK30g>):

“As was stated by Cultural Affairs Department and the City of Albuquerque, the Office of the State Engineer’s office would also be in favor of keeping the existing contract deadline turn-in date of June the first, given that an RFP has already been issued for this fiscal year. Thank you.”

Concise Explanatory Statement For Rulemaking Adoption:

Findings required for rulemaking adoption:

Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

Reasons for adopting rule:
 This is the annual update to 2.2.2 NMAC, promulgated pursuant to 12-6-12 NMSA 1978, to clarify audit procedures, change contract submittal dates, change due dates for some agency audits and for the state's comprehensive audit report, correct references, correct grammatical and formatting errors, and provide additional guidance to auditors.

Reasons for changes between the published proposed rule and final rule:
 Non-substantive, non-material grammatical and formatting changes, including removing statute-duplicative language;
 Accepting substantive arguments and persuasive public comments opposing proposed rule amendments; and
 Accepting substantive arguments and persuasive public comments requesting further clarification of proposed new and existing rule sections.

Reasons for not accepting substantive arguments made through public comments:
 All substantive arguments made through public comments were accepted by the Office of the State Auditor.

Issuing authority (If delegated, authority letter must be on file with ALD):

Check if authority has been delegated

Name:

Joseph M. Maestas

Title:

New Mexico State Auditor

Signature: (BLACK ink only OR Digital Signature)

Date signed:

DocuSigned by:

 DC87B4681D60449...

3/15/2023