

# 2023 Audit Rule Training



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# OSA 2023 Priorities

|         |   |
|---------|---|
| Partner | Partner with the Legislative Finance Committee's Program Evaluation Unit to determine appropriate programs to evaluate. |
| Reform  | Reform recruitment and retention through a compensation and classification study with private sector benchmarks.        |
| Push    | Push for greater financial assistance funding for small public bodies subject to the tiered system of review.           |
| Reduce  | Reduce red tape for agencies, local public bodies, and IPAs.  |



# OSA 2023 Priorities

|                            |   |
|----------------------------|---|
| Conduct                    | Conduct study of the pros and cons of a single state agency audit.  |
| Partner                    | Partner with stakeholders to continue building capacity among public entities through training and education to ensure they are financially compliant.  |
| Restructure and Reallocate | Restructure and reallocate resources to expand training and education statewide within the OSA to help prevent fraud, waste, and abuse with focus on small political subdivisions (acequias, mutual domestic water assoc., etc.). |

# Early Accomplishments



Implemented New Reorganization and Hybrid Telework Policy

- New Executive Team
- Strengthened administrative, conservatorship review, and legal services
- Launched New Intern Program In Partnership with Universities

Reduced Vacancy Rate From 37% to 29%

Issued First Subpoena!

# OSA 2023 Accomplishments



Implementing New, Multi-Year Full Financial Compliance Strategy for Small Public Bodies

New 3<sup>rd</sup> At-Risk List

Received \$500k Legislative Appropriation



Reduced Costs by Closing Unoccupied Albuquerque Office



Improved Coordination and Strengthened Partnerships with DFA and LFC

# 2023 Changes to the Audit Rule



**Presenter:**

**Ricky Bejarano, CPA, CGMA**

**Deputy State Auditor**

**[Ricky.Bejarano@osa.state.nm.us](mailto:Ricky.Bejarano@osa.state.nm.us)**



# AGENDA



**Key audit rule updates**



**Upcoming GASB Pronouncements**



**Special Investigation Division Key Reminders**



**Report Review Information**



# Key Changes to the Audit Rule for 2023

## Change:

2.2.2.7(A)(4) NMAC updated to add a new acronym, ACFR, for Annual Comprehensive Financial Report;

## Why this change is important:

This ensures the Audit Rule is consistent with GASBS 98 – The Annual Comprehensive Financial Report. The new acronym replaces all prior references to the Comprehensive Annual Financial Report.





# Key Changes

(continued)

## Change:

2.2.2.8(F)(7) NMAC updated to state that once OSA approval has been received, agencies must upload the fully executed PDF version of the audit contract into OSA Connect within 3 weeks;

## Why this change is important:

There have been ongoing issues regarding missing fully executed contracts. If a report comes in and OSA doesn't have the fully executed contract everyone experiences frustrating delays.



# Key Changes

(continued)

Change:

**2.2.2.9(B)(1) NMAC updated to require that auditors deliver an editable copy of the audit report no later than 5 p.m. on the report due date**

Why this change is important:

**Helps with workflow at OSA to ensure timely report review process.**



# Key Changes

(continued)

## Change:

- 2.2.2.10(A)(1)(c) and 2.2.2.12(B)(4)(b) NMAC updated with clarification relating to housing authorities



## Why this change is important:

- OSA receives many questions regarding housing authority auditors and these updates are intended to provide clarification for auditor requirements based on the Audit Act.



## Looking Forward:

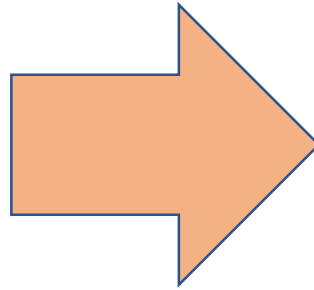
- There may be future changes to the audit act and the audit rule regarding housing authority audits based on updated HUD requirements.



# Key Changes

(continued)

Change:  
2.2.2.10(L)(5) NMAC update relates to professional service contract non-compliance findings.



Why this change is important:  
The Special Investigations Divisions in OSA monitors all engagements related to fraud, waste and/or abuse. This clarification provides auditors with a criteria for an associated finding if such non-compliance is identified.

Other Tip: All professional service contracts with IPAs related to fraud, waste and/or abuse require OSA approval and must use the OSA provided contract template.



# Audit Rule Reminders for Tiers

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- 2.2.2.16(A) explains what to include in the cash basis revenues.
- To calculate revenues to determine the correct tier:
  - Include:
    - Revenues from members
    - Revenues from services provided
    - Revenues from property taxes
    - Revenue from state-funded grants
  - Exclude:
    - Capital Outlay funds
    - Federal and private grants

# Audit Rule Reminders for Tiers (continued)

- 2.2.2.16 (B & C) NMAC relates to exemptions from financial reporting:
  - Entities determined to be either Tier 1 or Tier 2 pursuant to 2.2.2.16 (B)(1) & (2) are exempt from financial reporting.
- 2.2.2.16 (C) NMAC requires exempt entities to provide written certification to the OSA and to DFA-LGD on the tier certification form created by the OSA

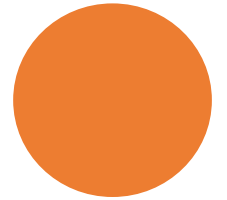
• OSA's Concern: OSA has learned that many entities are unaware they should also provide the tier certification to DFA-LGD.



# GASB Update for FY23

- The audit rule no longer includes the section for new standards that become effective for the fiscal year under audit.
  - These are GASB updates that require evaluation:
    - GASBS 94 – public-private and public-public partnerships and availability payment arrangements;
    - GASBS 96 – Subscription Based Information Technology Arrangements;
    - GASBS 99 – Omnibus 2022

• If you are unsure if any new GASBS impact your organization, be sure to discuss with your IPA.



The background features the official seal of the State of New Mexico, which includes an eagle with wings spread, perched on a cactus, holding a bow and arrow. The seal is surrounded by a circular border with the text "THE STATE OF NEW MEXICO" and "CRESCIT EUNDO".

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Special Investigations Director  
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## Special Investigations Division Reminders



# Important SID Reminders



## OSA SID Referrals:

- Suggesting elevated risk in a specific area; and
- Relevant to a particular agency's annual audit.



## Reminder:

After the concluding fieldwork and prior to submitting the draft audit report to the OSA for review, IPAs need to submit a written response to the referral to the OSA SID by email to [SIDreferrals@osa.state.nm.us](mailto:SIDreferrals@osa.state.nm.us) covering all aspects of the referral and any related findings.



# Important SID Reminders

## (continued)

### Confidentiality of Sources and Files 2.2.2.15 (A) (3) NMAC:

- **The identity of a person making a report and associated allegations made directly to the state auditor orally or in writing, or telephonically or in writing through the state auditor's fraud hotline or website, or through any other means, alleging financial fraud, waste, or abuse in government is confidential audit information.**
- **Any report alleging financial fraud, waste, or abuse in government that is made directly to the state auditor orally or in writing, or telephonically or in writing through the state auditor's fraud hotline or website, etc., and all related records and files thereto are confidential audit documentation.**
- **This documentation may not be disclosed by the OSA or the agency, except to an independent auditor, performance audit team or forensic accounting team in connection with a special audit, or other existing or potential engagement regarding the financial affairs or transactions of an agency.**



# Important SID Reminders

## (continued)

### Required Reporting of Criminal Violations:

**NMSA 1978, Section 12-6-6 requires an agency or an IPA to provide written notification to the state auditor immediately upon discovery of any alleged violation of a criminal statute in connection with financial affairs.**

- **Notifications are to be sent by e-mail to [reports@osa.state.nm.us](mailto:reports@osa.state.nm.us). They can also be sent by US mail.**
- **Notifications need to include (at a minimum):**
  - **an estimate of the dollar amount involved, *if known or estimable*;**
  - **a description of the alleged violation, including names of persons involved;**
  - **any action taken or planned; and,**
  - **If an agency or IPA has already made a report to law enforcement that fact shall be included in the notification**

**Note:** Please submit a formal notification addressed to the State Auditor. Agencies are asked not to submit notifications through the OSA's fraud hotline.



# Important SID Reminders

(continued)

## Reports arising from Special Audits or Examinations:

- The Audit Act, specifically NMSA 1978, Section 12-6-14 (B), requires the state auditor review all reports of any special audit or similar engagement for compliance with the professional services contract and the Audit Rule.
- To ensure compliance with NMSA 1978, Section 12-6-5 and 2.2.2.15 (D)(1) NMAC, all reports for special audits and examinations related to financial fraud, waste or abuse in government must report any violation of law (fraud, illegal acts) or good accounting practices (non-compliance or internal control deficiencies), as findings.

**Key Takeaway:** These reporting requirements apply regardless of whether they are conducted pursuant to AICPA standards for consulting services, forensic services or for attestation engagements, non-attest engagements, or other professional standards.

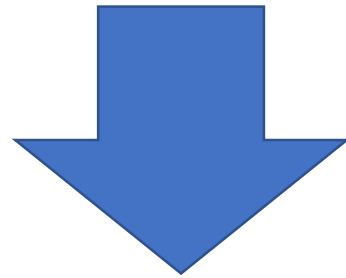


# Important SID Reminders

(continued)

## Special Audit Public Report Release:

- After completing a compliance review of a special audit or examination report, the OSA will authorize the IPA to submit an electronic version (PDF) of the *final* report.



- Once all required documents are received, the OSA will notify the agency by letter and publicly release the report.



# Important SID Reminders

(continued)

## Special Audit Confidentially Requirements:

**Confidential information is information that is not generally known to the public through common means of providing public information like the news media and internet.**

- **Unless otherwise noted in the audit rule, at no time either during the engagement or after the report becomes a public record, may the IPA or other professional(s) disclose to the public confidential information about the auditee or about the engagement.**
- **Agency and local public body personnel shall not release information to the public relating to the special audit or examination until the report is released by the OSA and has become a public record.**



# Questions?





10-minute break





# Audit Process Guidance

Ricky Bejarano, CPA, CGMA  
Deputy State Auditor  
[Ricky.Bejarano@osa.state.nm.us](mailto:Ricky.Bejarano@osa.state.nm.us)

# Report Review Process

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- **WHAT:** OSA reviews all reports for adherence to professional standards and compliance with the state audit rule prior to their release.
- **WHY:** NMSA 1978, Section 12-6-14 (B) states “...The state auditor or personnel of the state auditor’s office designated by the state auditor shall examine all reports of audits of agencies made pursuant to contract...”
- **WHERE:** Reports are reviewed at our office or via tele-work. There is tight control over the draft reports to ensure compliance with pre-release confidentiality requirements per 2.2.2.10 (M) NMAC;
- **WHEN:** OSA receives draft reports almost every day and they are usually assigned to a first reviewer within 1 business day. OSA’s goal (and performance measure) is to complete over 90% of first reviews within 30 days.





# Report Review Process (continued)

## WHAT Report Review IS:

- OSA staff completing over 700 first reviews with different OSA staff performing over 700 second reviews.
- Professional guidelines established to ensure all important report areas are considered;
- Tremendous use of professional judgement to ensure findings make sense;
- Collaboration regarding difficult technical issues and uncommon audit rule interpretations;
- Calls to IPA's for further clarification when necessary;
- Sending out an OK to Print Notification for the IPA and the agency.



## WHAT Report review IS NOT:

- A bureaucratic rubber stamp;
- A replacement for an IPA firm's quality control;
- A substitute for an agency assuming responsibility for their financial statements; or
- Expected to catch every error every time.



# Report Review Process

## (continued)

**OSA wants to release the best reports we can. Everyone is trying to ensure all comments are constructive. We consider all of you our partners in producing an excellent product.**

**Just because an issue was not identified in a prior year doesn't mean it is not a valid comment now. Please put consistency into perspective.**

**OSA usually reviews on a first-in, first-out basis. There are exceptions. Be sure to let us know in advance if your agency has a legitimate reason for prioritization such as:**

- **ACFR Submissions**
- **Bond Issuance requirements**

**Important note to all schools and institutions of higher education: Be sure to let OSA know when your agency will be closed for holiday breaks. The earlier we know, the better we can try to accommodate any special reasons for prioritization.**

# State Agency/DFA Review-Initial Review



**GOAL:** Supporting the timely and accurate state-wide ACFR effort

## **INITIAL REVIEW STEPS:**

- OSA reviews report and ensures DFA has reviewed financial information. DFA comments from ACFR analyst are sent to OSA and Agency – Agency must forward DFA comments to IPA.
- Ensure that the IAR contains the “emphasis of matter paragraph” required per 2.2.2.12(A)(10) NMAC
- OK to Print Notification is sent to IPA/agency when comments or the “all clear” is received from DFA
- The OK to Print Notification comments include the OSA reviewer comments regarding the report AND the comment that states “Please address all DFA comments or come to a resolution before submitting the final audit report.”



# State Agency/DFA Review-Final Review

## Before Final Submission:

IPA and Agency need to work with DFA to ensure all DFA comments have been either addressed – or that all involved parties are satisfied with resolution.

IPA and Agency need to work together to address all OSA reviewer comments.

- It is very helpful for us to see a memo explaining how all the DFA comments were addressed.

## Final Reviewer Steps:

OSA reviews all comments on the OK to print to ensure they have been addressed;

OSA reviewers also review any DFA comments to ensure they have been addressed or resolved to all parties' satisfaction;

If there are any questions, OSA will reach out to IPA and/or Agency;

If there were numerous comments, OSA will resend financial information to DFA to ensure final version is correct prior to release.



# Repeat Offenders: Comments on the OK to Print Notification

**OSA does the first and second reviews of over 700 reports. Here are some “repeat offenders” on the OK to Print:**

**Pledged Collateral – Usually updating the description answers all our questions. Public Money Act, NMSA 1978, § 6-10-1 *et seq.***

**GASB 87 - If this standard does not apply consider a note disclosure to that effect – This will stop us from adding in a comment asking for clarification.**

**Restatements and (lack of) related finding: Restatements for error correction fall under 2.2.2.10(F)(6) NMAC and NMSA 1978, § 12-6-5.**

**Schedule of Deposits and Investments – Please include whether the account is interest bearing or non-interest bearing. 2.2.2.10 (P) (3) NMAC.**



# Repeat Offenders: Comments on the OK to Print Notification for FINDINGS

## COMMON REPEAT OFFENDERS RELATED TO FINDINGS:

### Specific to Prior Year Repeated Findings:

Pursuant to 2.2.2.10(L)(1), be sure to include the current finding number followed by the historical finding number in parentheses.

Please update the condition to include management's progress or lack of progress in resolving prior year findings per 2.2.2.10(L)(1)(d)(i) NMAC.

### All Findings:

- Management Response to findings must contain a responsible position and a timeline for corrective action per 2.2.2.10(L)(1)(d)(vi) NMAC.
- Invalid Criteria: Please review the criteria to ensure it **\*actually applies\*** to the audited entity. Common examples are:
  - NMSA 1978, § 6-5-1 *et seq.*, used as a criteria for local public bodies
  - NMSA 1978, § 6-6-1 *et seq.*, used as a criteria for school districts





## Other Reminders

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**MAP's, PSAB's & other Official Policies and Procedures (such as DFA-LGD official memos)**

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**Please document your presentation to governing authority in the workpapers**

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**JPA's - review for audit responsibility**



# OSA Connect Information and Process



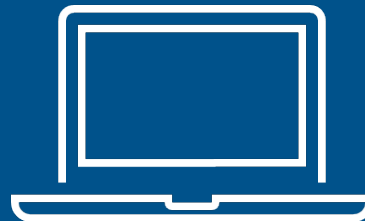
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# OSA Connect

[www.osa-app.org](http://www.osa-app.org)

All agency audit and agreed upon procedure contracts must be submitted through the OSA-Connect portal.





# OSA Connect (continued)

## Important Reminder



**Update the contact information for your agency.**



**Review ALL information for your agency, especially if it is pre-filled in OSA-Connect.**



**Tier System: Don't forget to go to Agency Profile and confirm the tier for your agency for current and any outstanding fiscal year(s).**



**The deadlines for all agencies to submit a draft contract to the OSA using the online OSA-Connect portal are available in the Audit Rule at Section 2.2.2.8 NMAC.**



# OSA Connect

(continued)

## Firms & IPAs

- **One button to print entire Firm Profile (registration).**
- **Save quick updates and submit quick updates.**
- **Final Audit Report Submission in OSA-Connect Portal.**
  - **Only contracts that are fully executed can be selected.**
  - **Approval, deny and approval.**
  - **Release letter to agency and firm.**
  - **Release to web.**

**Reminder – please ensure contract recommendation is submitted and approved by OSA *PRIOR* to work commencing.**



# Contracting Process

The OSA will not process hard copy contracts and will not sign contracts.

Each agency's contract will be sent electronically for review and approval.

The OSA will transmit an approval or rejection letter to each agency, and if approved, the agency will obtain the necessary signatures.

After the contract has been signed, the agency must upload the fully executed version in the OSA-Connect portal.



# Contracting Process

(continued)

## Amendments to Contracts

After the contract has been signed, the agency must upload the fully executed version in the OSA-Connect portal.

Amendments to change the tier of an AUP need to include the procedures for the newly selected tier.

Change from audit to AUP or vice versa requires new contract.

Evaluate price changes in all amendments.



# Contracting Process

(continued)

## Rotation Requirement

### **8 Consecutive Years with an Independent Public Accountant (IPA)**

- **RFP each 4 years; submit contract to OSA each year**
- **2 Year break**
- **Limited exceptions may be considered when requested with detailed support/explanation**

Agencies are responsible for ensuring procurement is followed when selecting IPA each year.

- **Procurement rules/policies vary by type – as such OSA is not able to provide procurement guidance.**





# State Law Compliance Guide



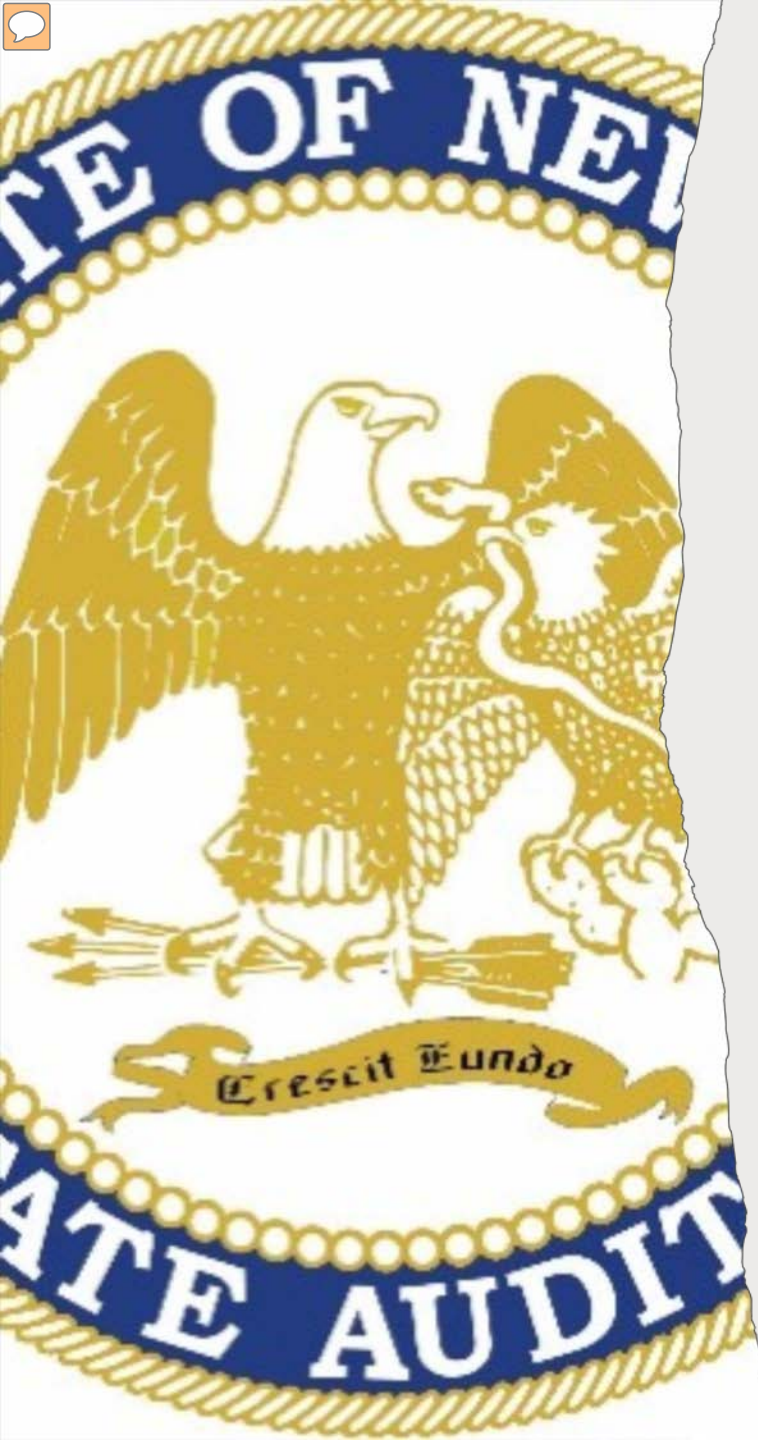
**Christopher Hall**  
**Assistant General Counsel**  
**[Christopher.Hall@osa.state.nm.us](mailto:Christopher.Hall@osa.state.nm.us)**



# Agenda



- **Audit Act**
- **Specific Tests**
- **FDIC and Pledged Collateral**
- **Property Dispositions**
- **Anti-Donation Clause**
- **Governmental Conduct Act**
- **State Agency Report Review**
- **Budgetary Compliance**
- **Gasoline Tax**
- **School Personnel Act**
- **Special Appropriations**
- **Q/A**



# Audit Act

## (Agency and Local Public Body definitions)

Per NMSA 1978, Section 12-6-2 (2009) of the Audit Act:

**A. "agency" means:**

- (1) any department, institution, board, bureau, court, commission, district or committee of the government of the state, including district courts, magistrate or metropolitan courts, district attorneys and charitable institutions for which appropriations are made by the legislature;**
- (2) any political subdivision of the state, created under either general or special act, that receives or expends public money from whatever source derived, including counties, county institutions, boards, bureaus or commissions; municipalities; drainage, conservancy, irrigation or other special districts; and school districts;**
- (3) any entity or instrumentality of the state specifically provided for by law, including the New Mexico finance authority, the New Mexico mortgage finance authority and the New Mexico lottery authority; and**
- (4) every office or officer of any entity listed in Paragraphs (1) through (3) of this subsection; and**

**B. "local public body" means a mutual domestic water consumers association, a land grant, an incorporated municipality or a special district.**

# Is State Law Compliance Applicable?



## When is State Law Compliance Not Required?

Example: Limited Partnerships (Discrete Component Units of a Public Housing Authority)

No Public Money, therefore, no:

- **Public Money Act**
- **Personnel Act**
- **Investment of Public Money**
- **Anti-Donation Clause**
- **Procurement Code**
- **Per Diem and Mileage Act**

But the partnership is still under NMAC Requirements for Contracting and Conducting Audits of Agencies and other state compliance rules may be needed based on the inflow of public money or new interpretation of rules.

# Specific Tests Required by the Audit Rule



| Specific Tests of Compliance |   |
|------------------------------|---|
| <input type="checkbox"/>     | Procurement Code (13-1-1 to 13-1-199 NMSA 1978)                                   |
| <input type="checkbox"/>     | Per Diem and Mileage Act (10-8-1 to 10-8-8 NMSA 1978)                             |
| <input type="checkbox"/>     | School Personnel Act (2210A-1 22A-39)   |
| <input type="checkbox"/>     | Public Money (6-10-1 to 6-10-63 NMSA 1978)  |
| <input type="checkbox"/>     | Investment of Public Money (6-10-1 to 6-10-63 NMSA 1978)                          |
| <input type="checkbox"/>     | Public Employment Retirement Act (10-11-1 to 10-11-38 NMSA 1978)                  |
| <input type="checkbox"/>     | Sale of Public Property (13-6-1 to 13-6-4 NMSA 1978)                              |
| <input type="checkbox"/>     | Anti-Donation Clause (NM Constitution Article IX, Section 14)                     |
| <input type="checkbox"/>     | Special, Deficiency, and Specific Appropriation                                   |
| <input type="checkbox"/>     | State Budget Compl. + Local Govt Budget Compl. 6-3-1 to 6-3-25 + 6-6-1 to 6-16-19 |
| <input type="checkbox"/>     | Lease Purchase Agreements   |
| <input type="checkbox"/>     | 1 NMAC 1.2.1, Accounting and Control of Fixed Assets of State Government          |
| <input type="checkbox"/>     | NMAC Requirements for Contracting and Conducting Audits of Agencies               |
| <input type="checkbox"/>     | Article IX of the State Constitution Limits on Indebtedness                       |
| <input type="checkbox"/>     | Retiree Health Care Authority Act (RHCA) (Section 10-7C-1 to 10-7C-19 NMSA 1978)  |
| <input type="checkbox"/>     | Governmental Conduct Act (10-16-1 to 10-16-18 NMSA 1978)                          |
| <input type="checkbox"/>     | Public School Finance Act (Section 22-8-1 to 22-8-48 NMSA 1978);                  |
| <input type="checkbox"/>     | Educational Retirement Act (Section 22-11-1 to 22-11-53 NMSA 1978)                |
| <input type="checkbox"/>     | Any Law, Regulation Related to Agency use of Gas CC, P-Cards, + other Issued CCs. |
| <input type="checkbox"/>     | School Athletics Equity Act 22-31-1 to 22-31-6                                    |



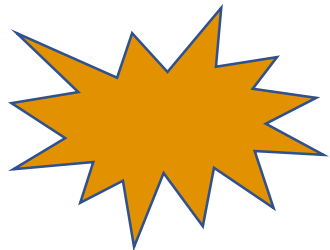
# FDIC Insurance and Pledged Collateral

## What has changed?

- Recent high profile bank failures;
- High volume of uninsured deposits > \$250k;
- Federal government stepped in to ensure all depositors were made whole.

## Key areas of concern:

- History of federal government picking which depositors are made whole;
- History of federal government deciding which banks fail and which banks are considered “too big to fail.”



**Decisions are based on risks to the overall U.S. and world economy.**



# FDIC Insurance and Pledged Collateral (continued)

## 6-10-17 NMSA 1978 Amount of Security to be Deposited:

Any bank or savings and loan association designated as a depository of public money shall deliver securities of the kind specified in NMSA 1978, Section 6-10-16 to a custodial bank described in NMSA 1978, Section 6-10-21 and shall then deliver a joint safekeeping receipt issued by the custodial bank to the public official from whom or the public board from which the public money is received for deposit. **The securities delivered shall have an aggregate value equal to one-half the amount of public money to be received in accordance with Subsection B of NMSA 1978, Section 6-10-16.** However, any such bank or savings and loan association may deliver a depository bond executed by a surety company as provided in NMSA 1978, Section 6-10-15 as security for any portion of a deposit of public money.

Note: Although state law only requires 50% collateral, local governments can always adopt ordinances that required more (e.g., CABQ requires 100% collateral)





# FDIC Insurance and Pledged Collateral (continued)

## **NMSA 1978, 6-10-16 Security of Deposits of Public Money:**

Deposits of public money shall be secured by:

1. Securities of the United States, its agencies or instrumentalities;
2. Securities of the state of New Mexico, its agencies, instrumentalities, counties, municipalities or other subdivisions;
3. Securities, including student loans, that are guaranteed by the United States or the state of New Mexico;
4. Revenue bonds that are underwritten by a member of the financial industry regulatory authority, known as FINRA, and are rated "BAA" or above by a nationally recognized bond rating service; or
5. Letters of credit issued by a federal home loan bank.

**No security is required for the deposit of public money that is insured by the federal deposit insurance corporation or the national credit union administration.**

All securities shall be accepted as security at market value. The restrictions of Subsection A of this section apply to all securities subject to this subsection.

Key question – What amounts are actually insured?



# FDIC Insurance and Pledged Collateral (continued)

## FDIC insures governmental deposits per Official Custodian as follows:

- The aggregate balances in demand deposit accounts are insured up to \$250k per Official Custodian, and
- The aggregate balances in time and savings accounts are insured up to \$250k per Official Custodian.

**Next key question: Who is an Official Custodian?**



# FDIC Insurance and Pledged Collateral (continued)

Per the FDIC, an Official Custodian:

Officer, employee, or agent of a public unit having official custody.

Has plenary authority – which means:

- Control over the funds
- Authority to establish accounts
- Authority to make deposits, withdrawals and disbursements
- <https://www.fdic.gov/deposit/deposits/factsheet.html>



# FDIC Insurance and Pledged Collateral (continued)

## Per the New Mexico Office of the State Treasurer:

The municipal treasurer, pursuant to state law, is the individual with plenary authority (for the purposes of the FDIC rules) over the funds of a municipality. In the absence of a treasurer, you would look to the municipality's ordinances or its CFO.

Unless otherwise provided by ordinance, a municipality only has one individual with plenary authority, which is the official custodian.

The elected treasurer of a county is the individual with plenary authority for a county.



# Property Dispositions

**NMSA 1978, 13-6-1 and 13-6-2 govern property dispositions from all types of entities, except for municipalities:**

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- **If property is on capital asset listing must notify OSA regarding the disposition;**
- **If resale value is between \$5,001 and \$25,000 oversight agency approval usually required before disposing of asset;**
- **If resale value is greater than \$25,000 Board of Finance Approval may be required (NMSA 1978, 13-6-2.1);**
- **Sale, trade or lease greater than \$100k of real property owned by state agency must be approved by the legislature. (NMSA 1978, 13-6-3)**

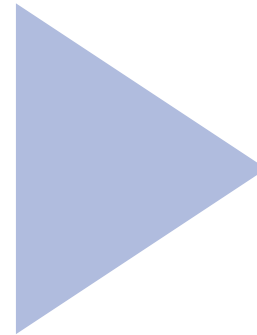


# Property Dispositions

## (continued)

### OSA is Notified:

- The notification to our office is just that – a notification.
- OSA is an independent agency acting as a repository record keeper for most asset dispositions occurring within the state of New Mexico.
- [reports@osa.state.nm.us](mailto:reports@osa.state.nm.us)



### Oversight Agencies have Approval Authority:

- Oversight agencies include DFA- SBD, DFA-LGD, PED, and HED and DPS for Canines
- Typically reviewing to ensure disposition method complies with state law;
- Also review funding source to determine if there are special restrictions on the sale of an asset;
- In-depth review of real property dispositions, including right of ways;
- Monitor affect on budgets once proceeds from asset disposition are received.



# Property Dispositions Notifications:

| NOTIFICATION REQUIRED FROM:                                       | EXEMPT FROM NOTIFICATION:   |
|---|---|
| ALL COUNTIES, STATE AGENCIES, SCHOOLS , INST. OF HIGHER EDUCATION |   |
| ALL TYPES OF MUTUAL DOMESTIC SPECIAL DISTRICTS                    |   |
| UTILITY AND FLOOD CONTROL AUTHORITIES                             | <b>ALL MUNICIPALITIES ARE EXEMPT FROM OSA ASSET DISPOSITION NOTIFICATION REQUIREMENTS</b> |
| LAND GRANTS, ACEQUIAS, AND DITCHES                                |   |
| GAS ASSOCIATIONS  |   |
| ANY OTHER ENTITY NOT NAMED HERE DEFINED AS A LOCAL PUBLIC BODY    |   |



# Property Dispositions (continued)

**Important Note:** NMSA 1978, 3-54-2 (D) requires DFA-LGD approval if selling or donating property to another governmental entity.

## Examples:

- A municipality is donating an older fire truck to a village.
- A municipality is selling a parcel of land to the federal government.

In both cases DFA LGD approval must be obtained prior to the transfer.





# Understanding the Anti-Donation Clause

Article IX

Section 14 of the NM Constitution states:

**“Neither the state nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation or in aid of any private enterprise for the construction of any railroad except as provided ...”**



# Understanding the Anti-Donation Clause (continued)

## *Constitutionally provided exceptions include:*

- Care and maintenance of sick and indigent persons;
- Veteran's scholarship program for Vietnam conflict veterans and other military war veterans;
- State established loan programs to students of healing arts;
- Creation of new job opportunities, by providing land, buildings or infrastructure to support new or expanding businesses; LEDA
- Certain, very specific items related to housing authorities and affordable housing.



10-minute break

# Governmental Conduct Act



What:  
10-16-1 through 10-16-18  
NMSA 1978:

Numerous topics related to expected and prohibited behavior of public employees, including (but not limited to):

- Ethical principles of public service;
- Contracts;
- Prohibited bidding;
- Prohibited employment;
- Conflicts of interest;
- Codes of Conduct

Who is covered,  
per 10-16-2 (I) NMSA 1978:

“A Public Officer or Employee means any elected or appointed official or employee of a state agency or local government who receives compensation in the form of salary or is eligible for per diem but excludes legislators.”



# Governmental Conduct Act (continued)

Why is this important:

Tone at the top: Sets appropriate expectations for operation of the agency and on-the-job behavior;

Audit Rule Compliance: 2.2.2.10 (J) (18) NMAC requires that auditors test compliance with the governmental conduct act;

Legal liability: Non-compliance with certain items in the Act can be considered a felony if found guilty;

Most importantly is our responsibility to the public we serve.



# Governmental Conduct Act (continued)

## Codes of Conduct per NMSA 1978, 10-16-11:

Each elected statewide executive branch public officer shall adopt a general code of conduct for employees...”

The codes of conduct should contain the elements described in NMSA 1978, 10-16-3.

General codes of conduct must be reviewed prior to or at the time of hire.

Must be reviewed at least once every 4 years.



# Governmental Conduct Act (continued)

Codes of Conduct per NMSA 1978, 10-16-11 continued):

“the head of every executive and legislative agency and institution of the state may draft a separate code of conduct” ...specific to the agency or institution: (NMSA 1978, 10-16-11 (C) :

Must contain requirements of general code of conduct as described in NMSA 1978, 10-16-3;

The separate code of conduct shall also prescribe standards “peculiar and appropriate” to the function and purpose of agency.

Separate codes of conduct must be filed with state ethics commission and are open to public inspection.

# Local Public Body Budgetary Compliance

## Definition of Local Public Body per NMSA 1978, 6-6-1

**“Local public body” means every political subdivision of the state that expends public money from whatever source derived, including counties, county institutions, boards, bureaus or commissions, incorporated cities, towns or villages, drainage, conservancy, irrigation or other districts, charitable institutions for which an appropriation is made by the legislature.**

**“Local public body” does not include smaller entities with revenues exclusive of capital outlay funds, federal or private grants, or pass through capital outlay funds less than \$50,000.**

**To put this in perspective there are over 310 Local Public Bodies and 89 School Districts and 130 state agencies registered in OSA Connect. The majority of governmental entities in the state qualify as a local public body.**

**Important Note: All LPBs are subject to IPRA, OMA, GCA.**







# Local Public Body Budgetary Compliance

(continued)

## Common non-compliance includes:

- **Not entering the DFA approved budget into the LPB's accounting system;**
- **Not processing or incorrectly processing approved budgeted transfers in the LPB's accounting system;**
- **Not budgeting intercepts and administrative fees correctly (or at all) accounting for net and not for gross revenues – can affect ACFR**
- **Not identifying DFA required reserves in the financial statements – LGBMS calculates restricted cash.**
- **Not tying out approved budget cash to audited cash; Risk approving budget based on cash that is overstated.**
- **Budget supporting schedules are part of the approved budget and budget cannot be approved (conditional budget) until all schedules are received; ACFR uses information from these supporting schedules.**



# Local Public Body Budgetary Compliance (continued)

## Why is Local Public Body budgetary compliance important?

- **There are lots of statutory reasons:**
- **6-6-3 NMSA 1978 requires that every local public body keep all the books, records and accounts in their respective offices in the form prescribed by DFA-LGD and make all reports as may be required.**
- **Per 6-6-4 NMSA 1978 “the LGD shall have the power, authority and responsibility to engage in research...”**
- **Per 6-6-6 NMSA 1978 The budget is legally binding and no governing authority or official shall allow or approve claims in excess thereof. Also, any individual who authorizes amounts in excess of the legally binding budget can become personal liabilities for the excessive amounts.**
- **However, the bottom line is compliance is in the best interest of the community.**
  - **Access to capital outlay**
  - **Increased transparency**
  - **Access to federal pass-through funds**



## Combined Fuel Tax for Small Local Public Bodies

*State gasoline tax distribution law establishes requirements for certain amounts collected to be distributed to local governments*

- NMSA 1978, 7-1-6.9 requires amounts distributed to LPB's pursuant to the Gasoline Tax Act be paid into a separate county or muni road fund.

There is an exception for smaller local public bodies:

Per NMSA 1978, 7-1-6.9 (D) : *"The distribution may be paid into a separate road fund or the general fund of the municipality or county if the municipality has a population less than three thousand or the county has a population less than four thousand."*

- Key takeaway: It's not always wrong if the gas tax goes into the general fund. In all instances the approved budget will show which fund receives the gasoline tax.



# School Personnel Act

## School Personnel Act, NMSA 1978, 22-10A-1 et. seq.

- NMSA 1978, 22-10A-4 : Officially establishes teaching and school administration as recognized professions and defines licensure framework and requirements.
- NMSA 1978, 22-10A-5 : Defines ethical misconduct, details requirements for fingerprinting and background checks, and requires school boards and REC's to develop policies and procedures related to background checks.
- The Audit Rule, 2.2.2.10 (J) (19) NMAC requires auditors to test for compliance with the School Personnel Act.
- Why is this important? Our children are why this is important. (Also, it's the law.)
- Financial personnel, HR professionals and independent auditors are not necessarily directly involved with students, but we can all make a big impact towards ensuring a safe environment by knowing the requirements of the School Personnel Act and by setting the correct tone to ensure these requirements are followed.



## Special, Deficiency and Supplemental Appropriations

*Special, Deficiency, Specific & Capital Outlay Appropriations Per 2.2.2.10(J)(10) & 2.2.2.10(R)(2) NMAC:*

Special, deficiency, supplemental, specific, and capital outlay appropriations funded by severance tax bonds or general obligation bonds of the state shall be disclosed in the notes to the financial statements.

*Additionally, certain items must be included in an SI schedule, or included in financial statement notes:*

- Original Appropriation
- Appropriation Period
- Expenditures to date
- Outstanding Encumbrances
- Unencumbered Balances
- Amounts Reverted
- The accounting treatment of any unexpended balances shall be fully explained in the SI schedule or in a note to the financial statements. This is a special requirement of the State Auditor, and it does not apply to the statewide ACFR audit.
- The schedule should reconcile to the respective fund.



# Audit Rule Changes and Timeline

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# Office of General Counsel Update

State Rules Act & Statutory Construction

Rule & Rulemaking Changes

Audit Rule Revision and Engagement Timeline

More Annual Trainings, not Annual Rulemakings

Q & A



# State Rules Act & Statutory Construction

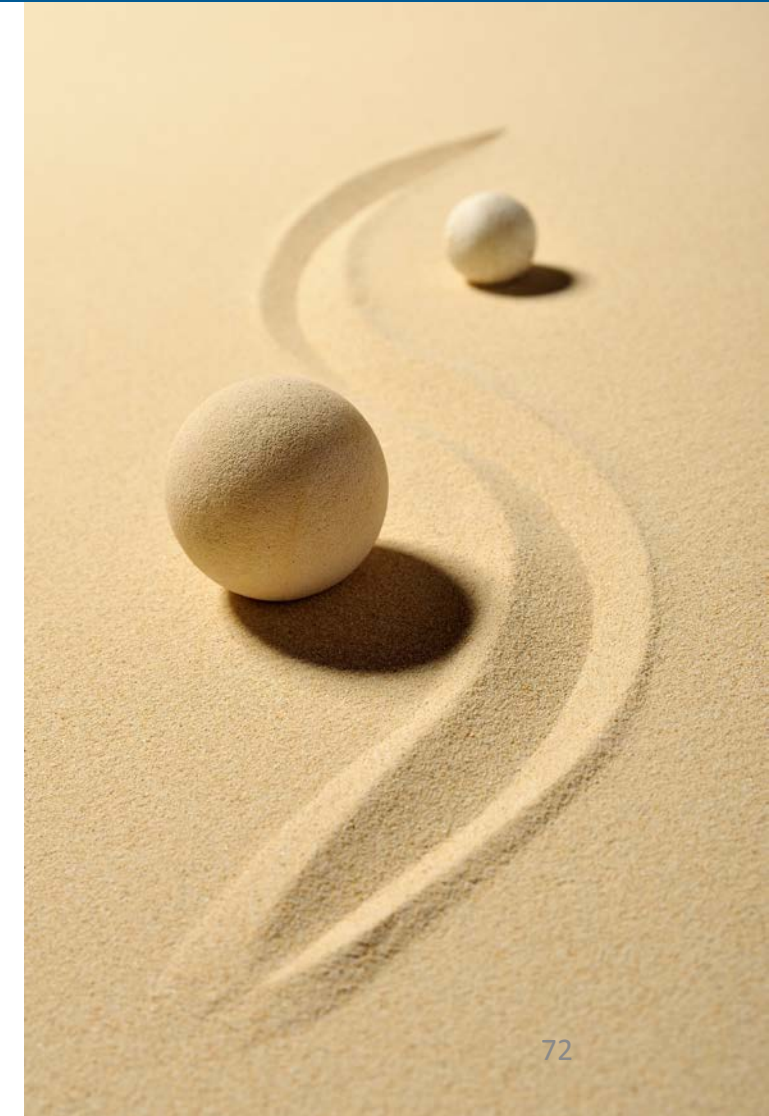
- **Necessary Revision for State Rules Act Compliance:**
  - Deleted definitions repeated from Audit Act
  - Deleted repetitions of already defined terms/acronyms

***NMSA 1978, § 14-4-5.7. Conflicts between rule and statute; variance between proposed and final action.***

*A. No rule is valid or enforceable if it conflicts with statute. A conflict between a rule and a statute is resolved in favor of the statute.*

*B. A word or phrase that is defined in an applicable statute should not be defined in rule. A conflict between a definition that appears in a rule and in an applicable statute is resolved in favor of the statute.*

- **Legislative & Interpretive Rules (See *Princeton Place v. N.M. Hum. Servs. Dep't*, 2022-NMSC-005.)**
  - “Interpretive rules are ‘issued by an agency to advise the public of the agency’s construction of the statutes and rules which it administers.’” *Princeton Place v. N.M. Hum. Servs. Dep’t*, 2022-NMSC-005, ¶ 28 (citing *Shalala v. Guernsey Memorial Hospital*, 514 U.S. 87, 99 (1995)).







# Rule & Rulemaking Changes

- **Move away from annual repeal and replace of the Audit Rule**
  - Rules are outward facing
  - Rules have the force and effect of law
  - Rules should be relatively stable and permanent
- **Goal: Create a permanent rule and an annually updated audit manual or guide for agencies and IPAs**
  - (See e.g., 2.2.2.10 (J).)
  - (In other words, a legislative rule and an interpretive rule.)



regulations. In addition to the significant state statutes, rules and regulations identified by the IPA, compliance with the following shall be tested if applicable (with the exception of the statewide ACFR):

(1) Procurement Code, Sections 13-1-1 to 13-1-199 NMSA 1978 including providing the state purchasing agent with the name of the agency's chief procurement officer, pursuant to Section 13-1-95.2 NMSA 1978, and Procurement Code Regulations, Section 1.4.1 NMAC, or home rule equivalent. All agencies must retain support for procurement until the contract expires or the minimum time required for record retention is met, whichever is longer.

(2) Per Diem and Mileage Act, Sections 10-8-1 to 10-8-8 NMSA 1978, and Regulations Governing the Per Diem and Mileage Act, Section 2.42.2 NMAC.

(3) Public Money Act, Sections 6-10-1 to 6-10-63 NMSA 1978, including the requirements that county and municipal treasurers deposit money in their respective counties, and that the agency receive a joint safe keeping receipt for pledged collateral. (In instances when another statute provides for a different timeline applicable to the agency, that statute shall control.)

(4) Public School Finance Act, Sections 22-8-1 to 22-8-48 NMSA 1978.

(5) Investment of Public Money Act, Sections 6-8-1 to 6-8-25 NMSA 1978.

(6) Public Employees Retirement Act, Sections 10-11-1 to 10-11-142 NMSA 1978. IPAs shall test to ensure eligible contributions are remitted to PERA. The IPA shall evaluate and test internal controls regarding employee eligibility for PERA and other benefits. IPAs shall evaluate risk associated with employees excluded from PERA and test that employees are properly excluded.

(7) Educational Retirement Act, Sections 22-11-1 to 22-11-55 NMSA 1978. IPAs shall test to ensure eligible contributions are remitted to ERA. The IPA shall evaluate and test internal controls regarding employee eligibility for ERA and other benefits. IPAs shall evaluate risk associated with employees excluded from ERA and test that employees are properly excluded.

(8) Sale of Public Property Act, Sections 13-6-1 to 13-6-8 NMSA 1978.

(9) Anti-Donation Clause, Article IX, Section 14, New Mexico Constitution.

(10) Special, deficiency, and supplemental appropriations (appropriation laws applicable for the year under audit).

(11) State agency budget compliance with Sections 6-3-1 to 6-3-25 NMSA 1978, and local government compliance with Sections 6-6-1 to 6-6-19 NMSA 1978.

(12) Lease purchase agreements, Article IX, Sections 8 and 11, New Mexico Constitution; Sections 6-6-11 to 6-6-12 NMSA 1978; *Montano v. Gubaldon*, 108 NM 94, 766 P.2d 1328 (1989).

(13) Accounting and control of fixed assets of state government, Sections 2.20.1.1 to 2.20.1.18 NMAC, (updated for GASBS 34 as applicable).

(14) Requirements for contracting and conducting audits of agencies, 2.2.2 NMAC.

(15) Article IX of the state constitution limits on indebtedness.

(16) Any law, regulation, directive or policy relating to an agency's use of gasoline credit cards, telephone credit cards, procurement cards, and other agency-issued credit cards.

(17) Retiree Health Care Act, Sections 10-7C-1 to 10-7C-19 NMSA 1978. IPAs shall test to ensure eligible contributions are reported to NMRHCA. NMRHCA employer and employee contributions are set forth in Section 10-7C-15 NMSA 1978. The IPA shall evaluate and test internal controls regarding employee eligibility for NMRHCA and other benefits. IPAs shall evaluate risk associated with employees excluded from NMRHCA and test that employees are properly excluded.

(18) Governmental Conduct Act, Sections 10-16-1 to 10-16-18 NMSA 1978.

(19) School Personnel Act, Sections 22-10A-1 to 22-10A-39 NMSA 1978.

(20) School Athletics Equity Act, Sections 22-31-1 to 22-31-6 NMSA 1978. IPAs shall test whether the district has submitted the required school-district-level reports, but no auditing of the reports or the data therein is required.

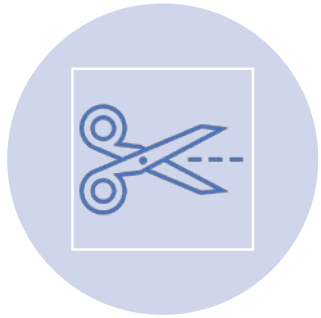


# Audit Rule Revision and Engagement Timeline

- **May 2023**
  - OSA Staff Revision and Review
- **July 2023**
  - OSA Draft of Rule and Manual
- **Fall 2023- Public Engagement**
  - Three Stakeholder Engagement Sessions
    - A. Build Consensus on Suggested/Proposed Changes
    - B. Designate Standing Committees/Study Groups to Focus on Particular Issues
- **Mid-March 2024 Adoption and Publication in the N.M. Register**
  - NOPR to be published in January 2024
  - Rulemaking Public Hearing in February 2024



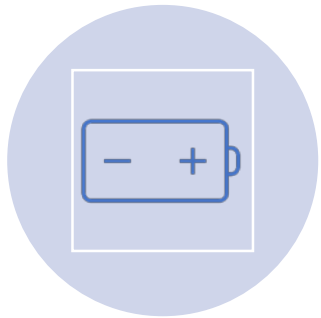
# GOAL: Increase Time & Resources for Training



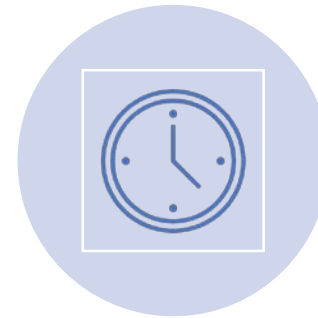
**Replace annual rulemaking with training and an annual update to the manual**



**Devote staff and time training and engagement with agencies, local public body trainings, and IPAs.**



**Provide more resources for helping entities get into compliance—and stay compliant.**



**More time for IPAs and Auditors to audit; earlier start times; earlier opportunities to submit contracts.**



# Questions? Contact us.



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