

NOTICE OF PROPOSED RULEMAKING AND PUBLIC HEARING

The Office of the State Auditor is in the process of amending 2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies ("Audit Rule"). The Audit Rule establishes policies, procedures, rules, and requirements for contracting and conducting financial audits, special audits, attestation engagements, performance audits, and forensic engagements of governmental agencies and local public bodies of the state of New Mexico and is governed by Sections 12-6-1 to 12-6-14 NMSA 1978 ("Audit Act"). The amendments to the Audit Rule are proposed pursuant to the Audit Act, at Section 12-6-12 NMSA 1978, which states "[t]he state auditor shall promulgate reasonable regulations necessary to carry out the duties of his office, including regulations required for conducting audits in accordance with generally accepted auditing standards."

A copy of the full text of the proposed amendments to the Audit Rule is available on the Office of the State Auditor's website, at <https://www.saonm.org/auditing/financial-audits/state-auditor-rule>.

The Office of the State Auditor will consider adopting the proposed new Audit Rule at a public hearing on March 14, 2023, at 9 a.m. at the New Mexico Society of Certified Professional Accountants at 3400 Menaul Blvd. NE, Albuquerque, NM 87107. The hearing will be a hybrid-virtual meeting and members of the public may attend, listen, and participate via live streaming or telephone as well as by attending in person. Please see the prior link for additional information on attending the virtual public hearing. Public comment is allowed prior to and at the public hearing on March 14, 2023. Please e-mail written comments on the proposed Audit Rule to Christopher Hall, at christopher.hall@osa.nm.gov between February 13, 2024, through March 14, 2023. If you are unable to e-mail comments, you may deliver written comments to the Office of the State Auditor, 2540 Camino Edward Ortiz, Suite A, Santa Fe, New Mexico 87507, as soon as possible and no later than March 14, 2024. All written comments will be posted on the Office of the State Auditor's website within three days of receipt.

Proposed amendments to the Audit Rule include the following: (i) amending the rule's scope and objective; (ii) updating, adding, removing, or clarifying certain definitions; (iii) clarifying peer review requirements for certain audit firms; (iii) amends and shortens the auditor rotation rule from eight years to six; (iv) amends the auditor subcontractor requirements; (v) amends the audit report due date for the Department of Homeland Security and Emergency Management; (vi) adds the New Mexico Opioid Allocation Agreement to the state law compliance audit requirements; (vii) amends the reporting requirements for possible violations of criminal statutes in connection with financial affairs; (viii) adds SOC audit definitions and qualification; (ix) changes a "shall" to a "may" at Subsection C of 2.2.2.8 NMAC; and (x) updates and clarifies rules for agency-initiated special audits and special investigations confidentiality requirements. To the extent applicable, the full text for relevant technical information that served as a basis for proposed changes is available at gasb.org, and gao.gov.

If you are an individual with a disability who is in need of auxiliary aid or service to attend or participate in the public hearing, please contact the Office of the State Auditor at least one week prior to the public hearing. Please contact Christopher Hall at 505-476-3800 or Christopher.Hall@osa.state.nm.us if any such assistance is needed.

At the start of the meeting, the Office of the State Auditor shall announce the names of those members of the public body participating remotely. All members of the Office of the State Auditor participating remotely shall identify themselves whenever they speak and be clearly audible to the other members of the public body and to the public. The Office of the State Auditor shall suspend discussion if the audio or video is interrupted until restored.

2.2.2.2 SCOPE: All agencies [~~Agencies~~] and local public bodies as defined by the Audit Act and designated independent public accountants, including auditors of the OSA, [~~interested in contracting to perform~~] performing professional services related to the examination of financial affairs and transactions of those agencies and local public bodies.

[2.2.2.2 NMAC - Rp, 2.2.2.2 NMAC, 3/28/2023; A, xx/xx/2024]

2.2.2.3 STATUTORY AUTHORITY: Audit Act, [~~Sections 12-6-1 to 12-6-14~~] Section 12-6-12 NMSA 1978.

[2.2.2.3 NMAC - Rp, 2.2.2.3 NMAC, 3/28/2023]

2.2.2.6 OBJECTIVE: The objective is to establish ~~[policies, procedures, rules, and requirements]~~ regulations for all agencies and local public bodies, as well as the New Mexico state auditor’s designated independent public accountants, including auditors of the OSA, performing ~~[contracting and conducting]~~ financial audits, special audits, attestation engagements, performance audits, and forensic accounting engagements ~~[of or]~~ for the examination of the financial affairs of all governmental agencies and local public bodies of the state of New Mexico.

[2.2.2.6 NMAC - Rp, 2.2.2.6 NMAC, 3/28/2023; A, xx/xx/2024]

2.2.2.7 DEFINITIONS: In addition to the definitions in the Audit Act, Section 12-6-2 NMSA 1978, the following definitions will apply to all financial examinations performed under this rule: ~~[This section describes certain terms used in 2.2.2 NMAC. When terminology differs from that used at a particular organization or under particular standards, auditors should use professional judgment to determine if there is an equivalent term:]~~

A. Definitions beginning with the letter “A”:

(1) **“AAG GAS”** means AICPA Audit and Accounting Guide - Government auditing standards and Single Audits (latest edition).

(2) **“AAG SLV”** means AICPA Audit and Accounting Guide - State and Local Governments (latest edition).

(3) **“Abuse”** includes, but is not limited to, behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary business practice given the facts and circumstances but excludes fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements. Abuse also includes misuse of authority or position for personal interests or for the benefit of another or those of an immediate or close family member or business associate. ~~[(GAGAS latest revision.) Abuse does not necessarily involve fraud or illegal acts. However, abuse may be an indication of potential fraud or illegal acts and may still impact the achievement of defined objectives. (GAO 14 704G federal internal control standards paragraph 8.03.)]~~

(4) **“ACFR”** means the state of New Mexico’s annual comprehensive financial report.

(5) **“~~[Attest]~~ Attestation engagement”** means an engagement to issue, or where an IPA issues, an examination, a review, AUP report, or report on subject matter, or an assertion about subject matter that is the responsibility of an agency or local public body, including engagements performed pursuant to AICPA and GAGAS attestation standards and all engagements pursuant to Subsection A of Section 12-6-3 NMSA 1978.

(6) **“Audit”** ~~[may refer to or include annual financial and compliance audit, or attestation engagement, unless otherwise specified]~~ means an examination of the financial affairs or performance of an agency or local public body pursuant to the authority of the Audit Act, Section 12-6-1, et seq., NMSA 1978.

(7) **“Audit documentation”** means the record of procedures performed, relevant evidence obtained, and conclusions reached (terms such as working papers or workpapers are also sometimes used).

(8) **“Auditor”** means designated independent public ~~[accountant]~~ accountants, including auditors of the OSA performing audit or ~~[attest]~~ attestation work as defined in the Audit Act and the Public Accountancy Act.

(9) **“AICPA”** means American institute of certified public accountants.

(10) **“AU-C”** means U.S. auditing standards-AICPA (Clarified).

(11) **“AUP”** means agreed upon procedures.

B. Definitions beginning with the letter “B”: [RESERVED]

C. Definitions beginning with the letter “C”:

“Component Unit” means a legally separate entity required to be reported in the financial statements of an agency or LPB due to the entity’s close financial relationship with the primary agency or LPB.

~~[(1) “CPA” means certified public accountant.~~

~~[(2) “CPE” means continuing professional education.~~

~~[(3) “CUSIP” means committee for uniform securities identification procedures, the unique identification number assigned to all stocks and registered bonds in the United States and Canada by the committee on uniform securities identification procedures.~~

~~[(4) “CYFD” means the New Mexico children youth and families department.]~~

D. Definitions beginning with the letter “D”:

~~[(1) “DFA” means the New Mexico department of finance and administration.~~

~~[(2) “DOH” means the New Mexico department of health.~~

~~[(3) “DOT” means the New Mexico department of transportation.~~

~~[(4) “DWS” means New Mexico Department of Workforce Solutions.]~~

- E. Definitions beginning with the letter “E”:**
~~_____ (1) “ECECD” means the New Mexico early childhood education and care department.~~
~~_____ (2) “ERB” means the New Mexico education retirement board.~~
- F. Definitions beginning with the letter “F”:**
~~(1) “FCD” means financial control division of [the department of finance and administration] DFA.~~
~~(2) [“FDIC” means federal deposit insurance corporation.]~~
~~_____ (3) “FDS” means financial data schedule.~~
~~(4) (3) “Fraud” means obtaining something of value through willful misrepresentations. This includes, but is not limited to, fraudulent financial reporting, misappropriation of assets, corruption, and use of public funds for activities prohibited by the constitution or laws of the state of New Mexico. Fraudulent financial reporting means intentional misstatements or omissions of amounts or disclosures in the financial statements to deceive financial statement users, which may include intentional alteration of accounting records, misrepresentation of transactions, or intentional misapplication of accounting principles. Misappropriation of assets means theft of an agency’s or LPB’s assets, including theft of property, embezzlement of receipts, or fraudulent payments. Corruption means bribery and other illegal acts. [(GAO-14-704G federal internal control standards paragraph 8.02).]~~
- G. Definitions beginning with the letter “G”:**
~~(1) “GAAP” means generally accepted accounting principles [generally] that are accepted in the United States of America.~~
~~(2) “GAAS” means generally accepted auditing standards, which are systematic guidelines used by auditors when conducting audits of an entity’s financial records in the United States of America.~~
~~[(2) (3) “GAGAS” means generally accepted government auditing standards, or the most recent revision of [government auditing standards] the yellow book issued by the comptroller general of the United States [yellow book].~~
~~_____ (3) “GAO” means the government accountability office, a division of the OSA.]~~
~~(4) “GASB” means governmental accounting standards board.~~
~~_____ (5) “GAAS” means auditing standards generally accepted in the United States of America.]~~
~~[(6) (5) “GSD” means the New Mexico general services department.~~
~~_____ (7) “GRT” means gross receipts tax.]~~
- H. Definitions beginning with the letter “H”:**
~~(1) “HED” means the New Mexico higher education department.~~
~~(2) “HSD” means the New Mexico human services department.~~
~~(3) “HUD” means the United States [(US)] department of housing and urban development.~~
- I. Definitions beginning with the letter “I”:**
~~(1) [“IPA” means the independent public accountant performing professional services for agencies and local public bodies.~~
~~_____ (2) “IRC” means internal revenue code.] “Independence” means both:~~
~~(a) independence of mind: The state of mind that permits the conduct of an engagement without being affected by influences that compromise professional judgment, thereby allowing an individual to act with integrity and exercise objectivity and professional skepticism; and~~
~~(b) independence in appearance: The absence of circumstances that would cause a reasonable and informed third party to reasonably conclude that the integrity, objectivity, or professional skepticism of an audit organization or member of the engagement team had been compromised.~~
~~(2) “IPA” means an independent public accountant designated by the state auditor to perform financial audits, special audits, attestation engagements, performance audits, and forensic accounting engagements for the examination of the financial affairs of agencies and local public bodies.~~
- J. Definitions beginning with the letter “J”: [RESERVED]**
K. Definitions beginning with the letter “K”: [RESERVED]
- L. Definitions beginning with the letter “L”:**
~~_____ (1) “LGD” means the local government division of [the department of finance and administration (DFA)] DFA.~~
~~_____ (2) “LPB” means local public body as defined in the Audit Act, Section 12-6-2 NMSA 1978.~~
- M. Definitions beginning with the letter “M”: [RESERVED]**
N. Definitions beginning with the letter “N”:
~~_____ (1) “NCUSIF” means national credit union shares insurance fund.~~

~~(2) “NMAC” means New Mexico administrative code.~~
~~(3) “NMCD” means the New Mexico corrections department.~~
~~(4) “NMSA” means New Mexico statutes annotated.~~
~~(5) “Non attest engagement” means any engagement that is not an attest engagement, including, but not limited to, services performed in accordance with the statement on standards for consulting services or the statement on standards for forensic services, or any other engagement that is not under Section 12-6-3 NMSA 1978, including certain agency initiated or other engagements in which the IPA’s role is to perform an engagement, assist the client or testify as an expert witness in accounting, auditing, taxation, or other matters, given certain stipulated facts.]~~

~~(1) “NMAC” means New Mexico administrative code.~~
~~(2) “NMSA” means New Mexico statutes annotated.~~
~~(3) “Non-attestation engagement” means any engagement that is not an attestation [attest] engagement, including, but not limited to, services performed in accordance with the statement on standards for consulting services or the statement on standards for forensic services, or any other engagement that is not under Section 12-6-3 NMSA 1978, including certain agency-initiated or other engagements in which the IPA’s role is to perform an engagement, assist the client or testify as an expert witness in accounting, auditing, taxation, or other matters, given certain stipulated facts.~~

O. Definitions beginning with the letter “O”:

~~(1) “Office” or “OSA” means the [New Mexico office of the state auditor.] office of the state auditor of New Mexico.~~

~~(2) “OMB” means the United States office of management and budget.]~~

P. Definitions beginning with the letter “P”:

(1) “PED” means the New Mexico public education department.

(2) “PERA” means the New Mexico public employee retirement association.

(3) ~~“PHA” means public housing authority.]~~ **“Primary government”** means the primary agency or primary local public body that a component unit is attached to due to their financial relationship.

Q. Definitions beginning with the letter “Q”: [RESERVED]

R. Definitions beginning with the letter “R”:

(1) ~~“REAC” means real estate assessment center.~~

~~(2) “REC” means regional education cooperative.~~

~~(3) (2) “Report” means a document issued as a result of an annual financial and compliance audit, special audit, attestation engagement, performance audit, forensic accounting engagement, or AUP engagement regardless of whether the document is on the contractor’s letterhead or signed by the contractor.~~

~~(4) (3) “RSI” means required supplementary information.~~

S. Definitions beginning with the letter “S”:

(1) ~~“SAS” means the AICPA’s statement on auditing standards.~~

~~(2) “SHARE” means statewide human resources accounting and management reporting system.~~

~~(3) “SI” means supplementary information.~~

~~(4) “SLO” means the state land office.~~

~~(5) “Special audit” means a limited-scope examination of financial records and other information designed to investigate allegations of waste, fraud, abuse, theft, non-compliance, or misappropriation of funds, or to quantify the extent of such losses, including both attest engagements and non-attest engagements, performance audits, forensic accounting engagements, and any other engagement that is not part of the annual financial statement and compliance audit, depending on designation or scope.~~

~~(6) “State auditor” may refer to either the elected state auditor of the state of New Mexico, or personnel of the office designated by the state auditor.~~

~~(7) “STO” means state treasurer’s office.]~~

~~(2) “SOC” means system organization controls, which is an audit review in connection with system-level controls of a service organization or entity-level controls of other organizations.~~

~~(3) “SOC-1” means an audit that provides an opinion regarding the controls as the service organization that are likely to be relevant to user entities’ internal control over financial reporting.~~

~~(4) “SOC-2” means an audit that provides an opinion about controls at the service organization related to security, availability, processing integrity, confidentiality, or privacy to support users’ evaluations of their own system of internal control.~~

(5) “SOC-3” means an audit to provide an opinion about the effectiveness of controls at the service organization relevant to security, availability, processing integrity, confidentiality, or privacy.

(6) “Special audit” means a limited-scope audit of an agency’s or local public body’s financial affairs and transactions, in whole or in part, including both attest engagements and non-attest engagements, performance audits, forensic accounting engagements, and any other engagement that is not part of the annual financial statement and compliance audit, depending on designation or scope.

(7) “Special investigation” or “special examination” means a limited-scope investigation into or examination of an agency’s or local public body’s financial records and other information designed to investigate allegations of waste, fraud, abuse, theft, non-compliance, or misappropriation of funds, or to quantify the extent of such losses.

(8) “State auditor” may refer to either the elected state auditor of the state of New Mexico, or personnel of the office designated by the state auditor.

T. Definitions beginning with the letter “T”: [RESERVED]

~~(1) [“Tier” is established based on the amount of each LPB’s [local public body’s] annual revenue, pursuant to Section 12-6-3 NMSA 1978. [and 2.2.2.16 NMAC.~~

~~(2) [“TRD” means the New Mexico taxation and revenue department.]~~

U. Definitions beginning with the letter “U”:

~~(1) [“UFRS” means uniform financial reporting standards.~~

~~(2) [“Uniform guidance” means Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.~~

~~(3) (2) “U.S. GAO” means the United States government accountability office.~~

V. Definitions beginning with the letter “V”: [RESERVED]

W. Definitions beginning with the letter “W”: “Waste” includes, but is not limited to, the act of using or expending resources carelessly, extravagantly, or to no purpose. Importantly, waste can include activities that do not include abuse. Rather waste relates primarily to mismanagement, inappropriate actions, and inadequate oversight. Waste does not necessarily involve fraud or illegal acts. However, waste may be an indication of ~~[potential] internal control weakness, non-compliance, fraud, or illegal acts [and may still impact the achievement of defined objectives. (GAO 14 704G federal internal control standards paragraph 8.03-)].~~

X. Definitions beginning with the letter “X”: [RESERVED]

Y. Definitions beginning with the letter “Y”: [RESERVED]

Z. Definitions beginning with the letter “Z”: [RESERVED]

[2.2.2.7 NMAC - Rp, 2.2.2.7 NMAC, 3/28/2023; A, xx/xx/2024]

2.2.2.8 THE PROCUREMENT AND AUDIT PROCESS:

A. Firm profiles: For an IPA to be included on the state auditor’s list of approved firms to perform audits, AUPs, and other attest engagements, an IPA shall submit a firm profile online annually on the fifth business day in January, in accordance with the guidelines set forth herein. The OSA shall review each firm profile for compliance with the requirements set forth in this rule. IPAs shall notify the state auditor of changes to the firm profile as information becomes available. The state auditor shall approve contracts for audit, AUPs, and other attest engagements only with IPAs who have submitted a complete and correct firm profile that has been approved by the OSA, and who have complied with all the requirements of this rule, including but not limited to:

(1) Subsection A of 2.2.2.14 NMAC, continuing professional education requirements for all staff that the firm will use on any New Mexico governmental engagements;

(2) for IPAs who have audited agencies under this rule in the past, they shall have previously complied with: 2.2.2.9 NMAC, report due dates, including notifying the state auditor regarding late audit reports and 2.2.2.13 NMAC, review of audit reports and audit documentation.

B. List of approved firms: The state auditor shall maintain a list of independent public accounting (IPA) firms that are approved and eligible to compete for audit contracts, AUPs, and other attest engagements with agencies. The state auditor’s list of approved firms shall be reviewed and updated on an annual basis. An IPA on the list of approved firms is approved to perform government audits, AUPs, and other attest engagements for agencies and local public bodies until the list of approved firms is published for the following year; provided that the OSA may restrict firms at any time for failure to submit firm profile updates timely. An IPA that is included on the state auditor’s list of approved firms for the first time may be subject to an OSA quality control review of the IPA’s working papers for audits, AUPs and other attest engagements. This review shall be conducted as soon as the documentation completion date, as defined by AU-C Section 230, has passed (60 days after the report release date, as posted on the OSA’s audit reports website). The state auditor shall approve contracts for audits, AUPs and other

attest engagements only with IPA firms that have submitted a complete and correct firm profile complying with all the requirements set forth in this rule and that has been approved by the OSA. The OSA shall inform all IPAs whose firm profiles were submitted by the due date whether they are on the list of approved firms for audits, AUPs and other attest engagements and shall publish the list of approved firms concurrent with notification to government agencies to begin the procurement process to obtain an IPA to conduct the agency's annual financial audit. Firms that only perform non-attest engagements, or otherwise do not meet applicable requirements, shall not be included on the list of approved firms.

C. Disqualified firms: An IPA firm ~~shall~~ may not be included on the list of approved firms for audits, AUPs, and other attest engagements if any of the following applies to that IPA:

(1) the firm received a peer review rating of "failed";
(2) the firm does not have a current New Mexico firm permit to practice, if applicable;
(3) the firm profile does not include at least one certified public accountant with a current CPA certificate who has met the GAGAS CPE requirements described at Subsection A of 2.2.2.14 NMAC, to perform GAGAS audits (however, firms seeking to contract only for agreed-upon-procedures engagements will not be disqualified if GAGAS CPE requirements have not been met);

(4) the IPA has been restricted in the past and has not demonstrated improvement (this includes submitting excessively deficient audit reports or having excessively deficient workpapers);
(5) the IPA made false statements in their firm profile or any other official communication with the OSA that were misleading enough to merit disqualification; or
(6) any other reason determined by the state auditor to serve the interest of the state of New Mexico.

D. Restriction:

(1) IPAs may be placed on restriction based on the OSA's review of the firm profile and deficiency considerations as described below. Restriction may take the form of limiting either the type of engagements or the number of audit contracts, or both, that the IPA may hold. The OSA may impose a corrective action plan associated with the restriction. The restriction remains in place until the OSA notifies the IPA that the restriction has been modified or removed. The deficiency considerations include, but are not necessarily limited to:

(a) failure to submit reports in accordance with report due dates provided in Subsection A of 2.2.2.9 NMAC, or the terms of their individual agency contract(s);
(b) failure to submit late report notification letters in accordance with Subsection A of 2.2.2.9 NMAC;
(c) failure to comply with this rule;
(d) poor quality reports as determined by the OSA;
(e) poor quality working papers as determined by the OSA;
(f) a peer review rating of "pass with deficiencies" with the deficiencies being related to governmental audits;
(g) failure to contract through the OSA for New Mexico governmental audits or AUP engagements;
(h) failure to inform agency in prior years that the IPA is restricted;
(i) failure to comply with the confidentiality requirements of this rule;
(j) failure to invite the state auditor or the auditor's designee to engagement entrance conferences, progress meetings or exit conferences after receipt of related notification from the OSA;
(k) failure to comply with OSA referrals or requests in a timely manner;
(l) suspension or debarment by the U.S. general services administration;
(m) false statements in the IPA's firm profile or any other official communication with the OSA;
(n) failure to cooperate timely with requests from successor IPAs, such as reviewing workpapers;
(o) failure to have required contracts approved by the OSA; or
(p) any other reason determined by the state auditor to serve the interest of the state of New Mexico.

(2) The OSA shall notify any IPA that it proposes to place under restriction. If the proposed restriction includes a limitation on the number of engagements that an IPA is eligible to hold, the IPA shall not submit proposals or bids to new agencies if the number of multi-year proposals the IPA possesses at the time of restriction is equal to or exceeds the limitation on the number of engagements for which the IPA is restricted.

(3) An IPA under restriction is responsible for informing the agency whether the restricted IPA is eligible to engage in a proposed contract.

(4) If an agency or local public body submits an unsigned contract to the OSA for an IPA that was ineligible to perform that contract due to its restriction, the OSA shall reject the unsigned contract.

E. Procedures for imposition of restrictions:

(1) The state auditor may place an IPA under restriction in accordance with Subsection D of 2.2.2.8 NMAC.

(a) The state auditor or the auditor's designee shall cause written notice of the restriction to be sent by email and certified mail, return receipt requested, to the IPA, which shall take effect as of the date of the letter of restriction. The letter shall contain the following information:

(i) the nature of the restriction;

(ii) the conditions of the restriction;

(iii) the reasons for the restriction;

(iv) the action to place the IPA on restriction is brought pursuant to Subsection A of Section 12-6-3 NMSA 1978 and these regulations;

(v) the IPA may request, in writing, reconsideration of the proposed contract restriction which shall be received by the OSA within 15 calendar days from the date of the letter of restriction; and

(vi) the e-mail or street address where the IPA's written request for reconsideration shall be delivered, and the name of the person to whom the request shall be sent.

(b) The IPA's written request for reconsideration shall include sufficient facts to rebut on a point for point basis each deficiency noted in the OSA's letter of restriction. The IPA may request an opportunity to present in person its written request for reconsideration and provide supplemental argument as to why the OSA's determination should be modified or withdrawn. The IPA may be represented by an attorney licensed to practice law in the state of New Mexico.

(c) The IPA shall have forfeited its opportunity to request reconsideration of the restriction(s) if the OSA does not receive a written request for reconsideration within 15 calendar days of the date of the letter of restriction. The state auditor may grant, for good cause shown, an extension of the time an IPA has to submit a request for reconsideration.

(2) The OSA shall review an IPA's request for reconsideration and shall make a determination on reconsideration within 15 calendar days of the IPA response letter unless the IPA has asked to present its request for reconsideration in person, in which case the OSA shall make a determination within 15 calendar days from the date of the personal meeting. The OSA may uphold, modify or withdraw its restriction pursuant to its review of the IPA's request for reconsideration, and shall notify the IPA of its final decision in writing which shall be sent to the IPA via email and certified mail, return receipt requested.

F. Procedures to obtain professional services from an IPA: Concurrent with publication of the list of approved firms, the OSA shall authorize agencies to select an IPA to perform their annual audit or AUP engagement. Agencies are prohibited from beginning the process of procuring IPA services for annual audits or AUPs pursuant to Section 12-6-3 NMSA 1978 until they receive the OSA authorization. Agencies that wish to begin the IPA procurement process for their annual audit or AUP pursuant to Section 12-6-3 NMSA 1978 prior to receiving OSA authorization may request an exception, however any such exceptions granted by OSA are subject to changes in the final audit rule applicable to the annual audit or AUP pursuant to Section 12-6-3 NMSA 1978 and changes in restrictions to, or disqualifications of, IPAs. The notification shall inform the agency that it shall consult its prospective IPA to determine whether the prospective IPA has been restricted by the OSA as to the type of engagement or number of contracts it is eligible to perform. Agencies that may be eligible for the tiered system shall complete the evaluation to determine the level of financial reporting described in Subsection B of 2.2.2.16 NMAC. Agencies that receive and expend federal awards shall follow the uniform guidance procurement requirements from 2 CFR 200.317 to 200.326 and 200.509, and shall also incorporate applicable guidance from the following requirements. Agencies shall comply with the following procedures to obtain professional services from an IPA for an audit or AUP engagement.

(1) Upon receipt of written authorization from the OSA to proceed, and at no time before then unless OSA has granted an exception, the agency shall identify all elements or services to be solicited pursuant to this rule and conduct a procurement that includes each applicable element of the annual financial and compliance audit, special audit, attestation engagement, performance audit, forensic audit or AUP engagement.

(2) Quotations or proposals for annual financial audits shall contain each of the following elements:

- (a) financial statement audit;
- (b) federal single audit (if applicable);
- (c) financial statement preparation so long as the IPA has considered any threat to independence and mitigated it;
- (d) other non-audit services (if applicable and allowed by current government auditing standards); and
- (e) other (i.e., audits of component units such as housing authorities, charter schools, foundations and other types of component units).

(3) Auditor Rotation Rule: An IPA may not provide services to an agency or LPB for longer than six years. Upon the six-year mark, the agency or LPB must obtain a proposal for another IPA for at least two years before returning to the prior IPA. These timeframes for auditor rotation do not correlate with procurement timeframes, so the agency and LPB must ensure that the contract follows both this rule and the procurement rules applicable.

~~(3)~~ (4) The agency is encouraged to request multiple year proposals for audit and AUP services, however the term of the contract shall be for one year only. The parties shall enter a new audit contract each year. The agency is responsible for procuring IPA services in accordance with all applicable laws and regulations which may include, but are not limited to, the State Procurement Code (Chapter 13, Article 1 NMSA 1978) or equivalent home rule procurement provisions; GSD Rule, Section 1.4.1 NMAC, Procurement Code Regulations, if applicable; DFA Rule, Section 2.40.2 NMAC, Governing the Approval of Contracts for the Purchase of Professional Services; Uniform Guidance; and Section 13-1-191.1 NMSA 1978 relating to campaign contribution disclosure forms. In the event that either of the parties to the contract elects not to contract for all of the years contemplated by a multiple year proposal, or the state auditor disapproves the contract, the agency shall use the procedures described above to procure services from a different IPA.

~~(4)~~ (5) If the agency is a component of a primary government, the agency's procurement for audit services shall include the AU-C 600 (group audits) requirements for the IPA to communicate and cooperate with the group engagement partner and team, and the primary government. This requirement applies to agencies and universities that are part of the statewide ACFR, other component units of the statewide ACFR and other component units of any primary government that use a different audit firm from the primary government's audit firm. Costs for the IPA to cooperate with the group engagement partner and team, and the primary government, caused by the requirements of AU-C 600 (group audit) may not be charged in addition to the cost of the engagement, as the OSA views this in the same manner as compliance with any other applicable standard.

~~(5)~~ (6) Agencies are encouraged to include representatives of the offices of separately elected officials such as county treasurers, and component units such as charter schools and housing authorities, in the IPA selection process. As part of their evaluation process, the OSA recommends that agencies consider the following when selecting an IPA for their annual audit or AUP pursuant to Section 12-6-3 NMSA 1978:

- (a) responsiveness to the request for proposal (the firm's integrity, record of past performance, financial and technical resources);
- (b) relevant experience, availability of staff with professional qualifications and technical abilities;

- (c) results of the firm's peer and external quality control reviews; and
- (d) weighting the price criteria less than fifteen percent of the total criteria taken into consideration by the evaluation process or selection committee.

Upon the OSA's request, the agency shall make accessible to the OSA all of the IPA procurement and selection documentation.

~~(6)~~ (7) After selecting an IPA for their annual audit or AUP pursuant to Section 12-6-3 NMSA 1978, each agency shall enter the appropriate requested information online on the OSA-connect website (www.osa-app.org). In order to do this, the agency shall register on OSA-Connect and obtain a user-specified password. The agency's user shall then use OSA-Connect to enter information necessary for the contract and for the OSA's evaluation of the IPA selection. After the agency enters the information, the OSA-Connect system generates a draft contract containing the information entered. The agency shall submit to the OSA for approval a copy of the unsigned draft contract by following the instructions on OSA-Connect.

~~(7)~~ (8) The OSA shall notify the agency as to the OSA's approval or rejection of the selected IPA and contract. The OSA's review of audit contracts does not include evaluation of compliance with any state or local procurement laws or regulations; each agency is responsible for its own compliance with applicable procurement laws, regulations or policies. After the agency receives notification of approval of the selected IPA and contract from the OSA, the agency is responsible for getting the contract signed and sent to any oversight agencies

for approval (if applicable). The OSA shall not physically sign the contract. After the agency obtains all the required signatures and approvals of the contract, the agency shall, within three weeks of OSA's approval of the contract, submit a copy of the fully executed contract in an electronic portable document format (PDF) by uploading it in OSA-Connect.

~~[(8)]~~ **(9)** The agency shall submit the unsigned contract generated by OSA-Connect to the OSA by the due date shown below; submission prior to the due date shown below is permissible. In the event that the due date falls on a weekend or holiday, the due date shall be the next business day. If the unsigned contract is not submitted to the state auditor by these due dates, the IPA may, according to professional judgment, include a finding of non-compliance with Subsection F of 2.2.2.8 NMAC in the audit report or AUP report.

(a) Regional education cooperatives, cooperative educational services, independent housing authorities, hospitals and special hospital districts: April 15;

(b) school districts, counties, and higher education: May 1;

(c) incorporated counties (of which Los Alamos is the only one), local workforce investment boards and local public bodies with a June 30 year end that do not qualify for the tiered system: May 15;

(d) councils of governments, district courts, district attorneys, state agencies: June 1 and the state of New Mexico ACFR: July 31;

(e) local public bodies that qualify for the tiered system pursuant to Subsections A and B of 2.2.2.16 NMAC with a June 30 fiscal year end: July 30;

(f) local public bodies that qualify for the tiered system pursuant to Subsections A and B of 2.2.2.16 NMAC with a fiscal year end other than June 30 shall use a due date 30 days after the end of the fiscal year;

(g) agencies and local public bodies that do not qualify for the tiered system with a fiscal year end other than June 30 shall use a due date 30 days before the end of the fiscal year;

(h) component units that are being separately audited: on the primary government's due date;

(i) Charter schools that are chartered by the PED and agencies that are subject to oversight by the HED have the additional requirement of submitting their audit contract to PED or HED for approval (Section 12-6-14 NMSA 1978); and

(j) In the event the agency's unsigned contract is submitted to the OSA, but is not approved by the state auditor, the state auditor shall promptly communicate the decision, including the reason(s) for disapproval, to the agency, at which time the agency shall promptly submit a contract with a different IPA using OSA-Connect. This process shall continue until the state auditor approves an unsigned contract. During this process, whenever an unsigned contract is not approved by the state auditor, the agency may submit a written request to the state auditor for reconsideration of the disapproval. The agency shall submit its request no later than 15 calendar days after the date of the disapproval and shall include documentation in support of its IPA selection. If warranted, after review of the request, the state auditor may hold an informal meeting to discuss the request. The state auditor shall set the meeting in a timely manner with consideration given to the agency's circumstances.

~~[(9)]~~ **(10)** The agency shall retain all procurement documentation, including completed evaluation forms, for five years and in accordance with applicable public records laws.

~~[(10)]~~ **(11)** If the agency fails to submit an unsigned contract by the due date set forth in this rule, or, if no due date is applicable, within 60 days of notification from the state auditor to engage an IPA, the state auditor may conduct the audit or select the IPA for that agency. The reasonable costs of such an audit shall be borne by the agency audited unless otherwise exempted pursuant to Section 12-6-4 NMSA 1978.

~~[(11)]~~ **(12)** In selecting an IPA for an agency pursuant to Subsection F of 2.2.2.8 NMAC the state auditor shall at a minimum consider the following factors, but may consider other factors in the state auditor's discretion that serve the best interest of the state of New Mexico and the agency:

(a) the IPA shall be drawn from the list of approved IPAs maintained by the state auditor;

(b) an IPA subject to restriction pursuant to Subsection D of 2.2.2.8 NMAC, is ineligible to be selected under this paragraph;

(c) whether the IPA has conducted one or more audits of similar government agencies;

(d) the physical proximity of the IPA to the government agency to be audited;

(e) whether the resources and expertise of the IPA are consistent with the audit requirements of the government agency to be audited;

(f) the IPA's cost profile, including examination of the IPA's fee schedule and blended rates;

(g) the state auditor shall not select an IPA in which a conflict of interest exists with the agency or that may be otherwise impaired, or that is not in the best interest of the state of New Mexico.

~~[(12)]~~ (13) The state auditor shall consider, at a minimum, the following factors when considering which agencies shall be subject to the state auditor's selection of an IPA:

(a) whether the agency is demonstrating progress in its own efforts to select an IPA;

(b) whether the agency has funds to pay for the audit;

(c) whether the agency is on the state auditor's "at risk" list;

(d) whether the agency is complying with the requirements imposed on it by virtue of being on the state auditor's "at risk" list;

(e) whether the agency has failed to timely submit its e-mailed draft unsigned contract copy in accordance with the audit rule on one or more occasions;

(f) whether the agency has failed to timely submit its annual financial audit report in accordance with the audit rule due dates on one or more occasions.

~~[(13)]~~ (14) The state auditor may appoint a committee of the state auditor's staff to make recommendations for the state auditor's final determination as to which IPAs shall be selected for each government agency subject to the discretion of the state auditor.

~~[(14)]~~ (15) Upon selection of an IPA to audit a government agency subject to the discretion of the state auditor, the state auditor shall notify the agency in writing regarding the selection of an IPA to conduct its audit. The notification letter shall include, at a minimum, the following statements:

(a) the agency was notified by the state auditor to select an IPA to perform its audit or AUP engagement;

(b) 60 days or more have passed since such notification, or the applicable due date in this rule has passed, and the agency failed to deliver its draft contract in accordance with this subsection;

(c) pursuant to Subsection A of Section 12-6-14 NMSA 1978, the state auditor is selecting the IPA for the agency;

(d) delay in completion of the agency's audit is contrary to the best interest of the state and the agency, and threatens the functioning of government and the preservation or protection of property;

(e) in accordance with Section 12-6-4 NMSA 1978, the reasonable costs of such an audit shall be borne by the agency unless otherwise exempted; and

(f) selection of the IPA is final, and the agency shall immediately take appropriate measures to procure the services of the selected IPA.

G. State auditor approval/rejection of unsigned contract: The state auditor shall use discretion and may reject unsigned contracts as follows:

(1) An unsigned audit contract, special audit contract, attestation engagement contract, performance audit contract, forensic accounting engagement contract or AUP professional services contract under 2.2.2.16 NMAC that does not serve the best interests of the public or the agency or local public body because of one or more of the following reasons:

(a) lack of experience of the IPA;

(b) failure to meet the auditor rotation requirements as follows: the IPA is prohibited from conducting the agency audit for a period of two years because the IPA already conducted those services for that agency for a period of ~~eight~~ six consecutive years;

(c) lack of competence or staff availability;

(d) circumstances that may cause untimely delivery of the audit report or AUP report;

(e) unreasonably high or low cost to the agency or local public body;

(f) terms in the proposed contract that the state auditor considers to be unfavorable, unfair, unreasonable, or unnecessary;

(g) lack of compliance with the procurement code, the audit act, or this rule;

(h) the agency giving too much consideration to the price of the IPA's response to the request for bids or request for proposals in relation to other evaluation criteria;

(i) newness of the IPA to the state auditor's list of approved firms;

(j) noncompliance with the requirements of Section 12-6-3 NMSA 1978 the audit act by the agency for previous fiscal years; or

(k) any other reason determined by the state auditor to be in the best interest of the state of New Mexico.

(2) An audit contract, special audit contract, attestation engagement contract, performance audit contract, or forensic accounting engagement contract or AUP contract of an IPA that has:

- (a) breached a prior-year contract;
- (b) failed to deliver an audit or AUP report on time;
- (c) failed to comply with state laws or regulations of the state auditor;
- (d) performed non-audit services (including services related to fraud) for an agency or local public body it is performing an audit, special audit, attestation engagement, performance audit, forensic accounting engagement or an AUP for, without prior approval of the state auditor;
- (e) performed non-audit services under a separate contract for services that may be disallowed by GAGAS independence standards;
- (f) failed to respond, in a timely and acceptable manner, to an OSA audit, special audit contract, attestation engagement contract, performance audit contract, forensic accounting engagement contract, AUP report review or working paper review;
- (g) impaired independence during an engagement;
- (h) failed to cooperate in providing prior-year working papers to successor IPAs;
- (i) not adhered to external quality control review standards as defined by GAGAS and 2.2.2.14 NMAC;
- (j) has a history of excessive errors or omissions in reports or working papers;
- (k) released the audit report or AUP report to the agency, local public body or the public before the audit release letter or the OSA letter releasing the AUP report was received from the OSA;
- (l) failed to submit a completed signed contingency subcontractor form, if required;
- (m) failed to submit a completed firm profile as required by Subsection A of 2.2.2.8 NMAC or failed to include all staff in the firm profile who would be working on the firm's engagements;
- (n) reached the limit of contracts to which the state auditor restricted the IPA;
- (o) failed to respond to communications from the OSA or engagement clients within a reasonable amount of time; or
- (p) otherwise, in the opinion of the state auditor, the IPA was unfit to be awarded a contract.

(3) An audit contract, special audit contract, attestation engagement contract, performance audit contract, forensic accounting engagement contract or AUP contract for an IPA received by the OSA, which the state auditor decides to perform himself with or without the assistance of an IPA, and pursuant to Section 12-6-3 NMSA 1978, even if the agency or local public body was previously designated for audit or AUP to be performed by an IPA.

H. Audit contract requirements: The agency shall use OSA-Connect at www.osa-app.org to submit the appropriate audit or AUP engagement contract. The OSA may provide audit or AUP engagement contract forms to the agency via facsimile, e-mail, or U.S. mail if specifically requested by the agency. Only contract templates generated through OSA-Connect shall be accepted and shall:

- (1) be completed and submitted in its unsigned form by the due date indicated at Subsection F of 2.2.2.8 NMAC;
- (2) for all agencies whose contracts are approved through the DFA's contracts review bureau, have the IPA's combined reporting system (CRS) number verified by the taxation and revenue department (TRD) after approval by the state auditor; and
- (3) in the compensation section of the contract, include the dollar amount that applies to each element of the contracted procedures that shall be performed;
- (4) in the "other" section of the contract additional services shall be related to the scope of work, but not included in previous categories in the compensation section. Such costs shall be fully detailed and sufficiently describe the required audit related work in the "other provisions" section of the contract.

I. Professional liability insurance: The IPA shall maintain professional liability insurance covering any error or omission committed during the term of the contract. The IPA shall provide proof of such insurance to the state auditor with the firm profile. The amount maintained should be commensurate with the risk assumed. The IPA shall provide to the state auditor, prior to expiration, updated insurance information.

J. Breach of contract: A breach of any terms of the contract shall be grounds for immediate termination of the contract. The injured party may seek damages for such breach from the offending party. Any

IPA who knowingly makes false statements, assurances, or disclosures may be disqualified from conducting audits or AUP engagements of New Mexico governmental agencies.

K. Subcontractor requirements:

(1) Audit firms that have only one individual qualified to supervise a GAGAS audit and issue the related audit report pursuant to Section 61-28B-17 NMSA 1978, and GAGAS Paragraph 4.16 shall submit with the firm profile, a completed contingency subcontractor form that is dated to be effective until the date the next firm profile shall be submitted. The form shall indicate which IPA on the state auditor's current list of approved IPA's shall complete the IPA's audits in the event the one individual with the qualifications described above becomes incapacitated and unable to complete the audit. See the related contingency subcontractor form available at www.osanm.org. The OSA shall not approve audit contracts for such a firm without the required contingency subcontractor form.

(2) In the event an IPA chooses to use a subcontractor to assist the IPA in working on a specific audit, then the IPA shall ~~obtain the prior written approval of the state auditor to~~ submit a subcontract with the reason for subcontracting a portion of the audit work to the OSA for approval. The IPA may subcontract only with IPAs ~~[who have submitted a completed and approved firm profile to the state auditor as required in Subsection A of 2.2.2.8 NMAC] on the approved IPA list.~~ Subcontractors are subject to an independence analysis, which may include the ~~[IPA rotation] auditor rotation rule~~ requirements of ~~[Subsection G] Subsection F~~ of 2.2.2.8 NMAC. ~~["Technical review contracts" are considered subcontracting and are subject to the requirements of this Section. The audit contract shall specify subcontractor responsibility, who shall sign the report(s), and how the subcontractor shall be paid. For additional information see the subcontract work section of the OSA website.]~~

(3) "Technical review contracts" are considered subcontracting and are subject to the requirements of this section. The audit contract shall specify subcontractor responsibility, who shall sign the report(s), and how the subcontractor shall be paid. For additional information see the subcontract work section of the OSA website.

L. IPA independence: IPAs shall maintain independence with respect to their client agencies in accordance with the requirements of the current government auditing standards.

M. Progress Payments: The state auditor shall approve progress and final payments for the annual audit contract as follows:

(1) Subsection A of Section 12-6-14 NMSA 1978 (contract audits) provides that "payment of public funds may not be made to an independent auditor unless a contract is entered into and approved as provided in this section."

(2) Subsection B of Section 12-6-14 NMSA 1978 (contract audits) provides that the state auditor may authorize progress payments on the basis of evidence of the percentage of audit work completed as of the date of the request for partial payment.

(3) Progress payments up to seventy percent do not require state auditor approval provided that the agency certifies the receipt of services before any payments are made to the IPA. If the report has been submitted, progress payments up to eighty-five percent do not require state auditor approval. The agency shall monitor audit progress and make progress payments only up to the percentage that the audit is completed. If requested by the state auditor, the agency or the IPA shall provide a copy of the approved invoices and progress billing(s). Progress payments between seventy percent and ninety-five percent if no report has been submitted, or eighty-five and ninety-five percent if a report has been submitted, require state auditor approval after being approved by the agency. When component unit audits are part of a primary government's audit contract, requests for progress payments on the component unit audit(s) shall be included within the primary government's request for progress payment approval. In this situation, the OSA shall not process separate progress payment approvals submitted by the component unit.

(4) The state auditor may limit progress payments allowed to be made without state auditor approval for an IPA whose previous audits were submitted after the due date specified in Subsection A of 2.2.2.9 NMAC to only the first fifty percent of the total fee.

(5) Section 12-6-14 NMSA 1978 (contract audits) provides that final payment under an audit contract may be made by the agency to the IPA only after the state auditor has determined, in writing, that the audit has been made in a competent manner in accordance with contract provisions and this rule. The state auditor's determination with respect to final payment shall be communicated as follows:

(a) stated in the letter accompanying the release of the report to the agency; or
(b) in the case of ongoing law enforcement investigations, stated in a letter prior to the release of the report to the agency.

In no circumstance may the total billed by the IPA under the audit contract exceed the total contract amount, as amended if applicable. Further, as the compensation section of the contract shall include the dollar amount that applies to each element of the contracted procedures that shall be performed, if certain procedures, such as a single audit, are determined to be unnecessary and are not performed, the IPA may not bill the agency for these services. Final payment to the IPA by the agency prior to review and release of the audit report by the state auditor is considered a violation of Section 12-6-14 NMSA 1978 and this rule and shall be reported as an audit finding in the audit report of the agency. If this statute is violated, the IPA may be removed from the state auditor's list of approved auditors.

N. Contract amendment requirements:

(1) Contract amendments to contracts for audit services, AUP services, or non-attest services shall be submitted to the OSA regarding executed contracts. Contracts may not be amended after they expire. The contract should be amended prior to the additional work being performed or as soon as practicable thereafter. The agency shall use OSA-Connect at www.osa-app.org to submit the appropriate draft audit or AUP engagement contract amendment. The OSA's review of audit contracts and amendments does not include an evaluation of compliance with the state procurement code or other applicable requirements. Although the parties may amend the delivery dates in a contract, audit report regulatory due dates cannot be modified by amendment. The OSA's review of audit contract amendments does not include evaluation of compliance with any state or local procurement laws or regulations; each agency is responsible for its own compliance with applicable procurement laws, regulations, or policies.

(2) Contract amendments submitted for state auditor approval shall include a detailed explanation of:

- (a) the work to be performed and the estimated hours and fees required for completion of each separate professional service contemplated by the amendment; and
- (b) how the work to be performed relates to the scope of work outlined in the original contract.

(3) Since annual financial audit contracts are fixed-price contracts, contract amendments for fee increases shall only be approved for extraordinary circumstances, reasons determined by the state auditor to be in the best interest of the state of New Mexico, or a significant change in the scope of an audit. For example, if an audit contract did not include a federal single audit, a contract amendment shall be approved if a single audit is required. Other examples of significant changes in the scope of an audit include: the addition of a new program, function or individual fund that is material to the government-wide financial statements; the addition of a component unit; and the addition of special procedures required by this rule, a regulatory body or a local, state, or federal grantor. Contract amendments shall not be approved to perform additional procedures to achieve an unmodified opinion. The state auditor shall also consider the auditor independence requirements of Subsection L of 2.2.2.8 NMAC when reviewing contract amendments for approval. The OSA shall review amendment requests and respond to the agency and the IPA within 30 calendar days of receipt.

(4) If a proposed contract amendment is rejected for lack of adequate information, the IPA and agency may submit a corrected version for reconsideration.

O. Termination of audit contract requirements:

(1) The state auditor may terminate an audit contract to be performed by an IPA after determining that the audit has been unduly delayed, or for any other reason, and perform the audit entirely or partially with IPAs contracted by the OSA (consistent with the October 6, 1993, stipulated order, *Vigil v. King*, No. SF 92-1487(C)). The notice of termination of the contract shall be in writing.

(2) If the agency or IPA terminates the audit or AUP engagement contract pursuant to the termination paragraph of the contract, the OSA shall be notified of the termination immediately. The party sending out the termination notification letter shall simultaneously send a copy of the termination notification letter to the OSA with an appropriate cover letter, addressed to the state auditor.

(a) The agency is responsible for procuring the services of a new IPA in accordance with all applicable laws and regulations, and this rule.

(b) The unsigned contract for the newly procured IPA shall be submitted to the OSA within 30 calendar days of the date of the termination notification letter.

(c) As indicated in Subsection A of 2.2.2.9 NMAC, the state auditor shall not grant extensions of time to the established regulatory due dates.

(d) If the IPA does not expect to deliver the engagement report by the regulatory due date, the IPA shall submit a written notification letter to the state auditor and oversight agency as required by Subsection A of 2.2.2.9 NMAC or Subsection G of 2.2.2.16 NMAC.

2.2.2.9 REPORT DUE DATES:

A. Report due dates: The IPA shall deliver the electronic draft annual financial audit report to the state auditor by 5:00 p.m. on the date specified in the audit contract and send it electronically by the due date. IPAs and agencies are encouraged to perform interim work as necessary and appropriate to meet the following due dates.

- (1) The audit report due dates are as follows:
 - (a) regional education cooperatives, cooperative educational services and independent housing authorities: September 30;
 - (b) hospitals and special hospital districts: October 15;
 - (c) higher education, state agencies not specifically named elsewhere in this Subsection, district courts, district attorneys, the New Mexico finance authority, the New Mexico lottery authority, and other agencies with June 30 fiscal year-ends that are reported as component units in the state of New Mexico ACFR: November 1;
 - (d) school districts, TRD, CYFD, DOH, DOT, DWS, HSD, GSD, ECECD, SLO, and NMCD: November 15;
 - (e) ~~the~~ PED, New Mexico department of homeland security and emergency management, the state investment council, and the three post-employment benefit agencies (PERA, ERB, and the retiree health care authority): the Wednesday before Thanksgiving day;
 - (f) counties, incorporated counties (of which Los Alamos is the only one), workforce investment boards, councils of governments, and the New Mexico mortgage finance authority, and the state of New Mexico component appropriation funds (state general fund): December 1;
 - (g) local public bodies and municipalities: December 15;
 - (h) the state of New Mexico ACFR: December 31;
 - (i) the ERB, PERA and retiree health care authority schedules of employer allocations reports and related employer guides required by Subsections Z of 2.2.2.10 NMAC: June 15;
 - (j) agencies with a fiscal year-end other than June 30 shall submit the audit report no later than five months after the fiscal year-end;
 - (k) regarding component unit reports (e.g., housing authorities, charter schools, hospitals, foundations, etc.), all separate audit reports prepared by an auditor that is different from the primary government's auditor, are due fifteen days before the primary government's audit report is due, unless some other applicable due date requires the report to be submitted earlier;
 - (l) any agency that requires its report to be released by December 31st for any reason (bonding, GFOA, etc.): the earlier of its agency due date or December 1;
 - (m) any agency that requires its report to be released by any specific date (e.g., due to board meeting, federal reporting, etc.): the earlier of its agency due date or one month prior to the requested release date; and
 - (n) late audit or AUP reports of any agency (not performed in the current reporting period): not more than six months after the date the contract was executed.
- (2) If an audit report is not delivered on time to the state auditor, the auditor shall include this instance of non-compliance with Subsection A of 2.2.2.9 NMAC as an audit finding in the audit report. This requirement is not negotiable. If appropriate, the finding may also be reported as a significant deficiency or material weakness in the operation the agency's internal controls over financial reporting pursuant to AU-C 265.
- (3) An electronic copy of the report shall be submitted for review by the OSA with the following: copy of the signed management representation letter and a copy of the completed state auditor report review guide (available at www.saonm.org). A report shall not be considered submitted to the OSA for the purpose of meeting the due date until a copy of the signed management representation letter and the completed report review guide are also submitted to the OSA. All separate reports prepared for component units shall also be submitted to the OSA for review, along with a copy of the management representation letter, and a completed report review guide for each separate audit report. A separate component unit report shall not be considered submitted to the OSA for the purpose of meeting the due date until a copy of the signed management representation letter and the completed report review guide are also submitted to the OSA. If a due date falls on a weekend or holiday, or if the OSA is closed due to inclement weather, the audit report is due the following business day by 5:00 p.m.
- (4) AU-C 700.41 requires the auditor's report to be dated after audit evidence supporting the opinion has been obtained and reviewed, the financial statements have been prepared and the management

representation letter has been signed. AU-C 580.20 requires the management representation letter to be dated the same date as the independent auditor's report.

(5) As soon as the auditor becomes aware that circumstances exist that will make an agency's audit report be submitted after the applicable due date provided in Subsection A of 2.2.2.9 NMAC, the auditor shall notify the state auditor in writing. This notification shall consist of a letter, not an email. However, a scanned version of the official letter sent via email is acceptable. The late audit notification letter is subject to the confidentiality requirements detailed at Subsection M of 2.2.2.10 NMAC. This does not prevent the state auditor from notifying the legislative finance committee or applicable oversight agency pursuant to Subsections F and G of Section 12-6-3 NMSA 1978. There shall be a separate notification for each late audit report. The notification shall include a specific explanation regarding why the report will be late, when the IPA expects to submit the report and a concurring signature by a duly authorized representative of the agency. If the IPA is going to miss the expected report submission date, then the IPA shall send a revised notification letter. In the event the contract was signed after the report due date, the notification letter shall still be submitted to the OSA explaining the reason the audit report will be submitted after the report due date. The late report notification letter is not required if the report was submitted to the OSA for review by the due date, and then rejected by the OSA, making the report late when resubmitted. Reports resubmitted to the OSA with changes of the IPA's opinion after the report due date shall be considered late and a late audit finding shall be included in the audit report.

(6) The due date of any report not listed in Subsection A of 2.2.2.9 NMAC shall be the date specified in the contract.

B. Delivery and release of the audit report:

(1) The IPA shall deliver to the state auditor an editable electronic copy of the audit report for review by 5:00 p.m. on the day the report is due. Unfinished or excessively deficient reports shall not satisfy this requirement; such reports shall be rejected and returned to the IPA and the OSA may take action in accordance with Subsection C of 2.2.2.13 NMAC. When the OSA rejects and returns a substandard audit report to the IPA, the OSA shall consider the audit report late if the corrected report is not resubmitted by the due date. The IPA shall also report a finding for the late audit report in the audit report. The firm shall submit an electronic version of the corrected rejected report for OSA review. The name of the electronic file shall be "corrected rejected report" followed by the agency name and fiscal year.

(2) Before initial submission, the IPA shall review the report using the appropriate report review guide available on the OSA's website. The report review guide shall reference applicable page numbers in the audit report. The audit manager or person responsible for the IPA's quality control system shall either complete the report review guide or sign off as having reviewed it. All questions in the guide shall be answered, and the reviewer shall sign and date the last page of the guide. If the review guide is not accurately completed or incomplete, the report shall not be accepted.

(3) IPAs are encouraged to deliver completed audit reports before the due date. All reports, except for reports prepared by the OSA, shall be addressed to the state auditor, the agency executive and governing body (if applicable). Reports prepared by the OSA shall be addressed to the agency executive and governing body (if applicable). The OSA shall review all audit reports submitted by the report due date before reviewing reports that are submitted after the report due date. Once the review of the report is completed pursuant to Subsection A of 2.2.2.13 NMAC, and any OSA comments have been addressed by the IPA, the OSA shall indicate to the IPA that the report is ready to print. After the OSA issues the "OK to print" communication for the audit report, the OSA shall authorize the IPA to submit the corrected report with the following items to the OSA within five business days; an electronic searchable version of the audit report labeled "final", in PDF format, and an electronic Excel version of the summary of findings report and any other required electronic schedule (electronic schedules may not apply to engagements pursuant to 2.2.2.15 or 2.2.2.16 NMAC) if applicable, and an electronic excel version of the schedule of asset management costs for investing agencies, if applicable (all available at www.saonm.org). The OSA shall not release the report until the searchable electronic PDF version of the report and all required electronic Excel schedules are received by the OSA. The electronic file containing the final audit report shall:

(a) be created and saved as a PDF document in a single PDF file format (simply naming the file using a PDF extension .pdf does not by itself create a PDF file);

(b) be version 5.0 or newer;

(c) not exceed 10 megabytes (MB) per file submitted (contact the OSA to request an exception if necessary);

(d) have all security settings like self-sign security, user passwords, or permissions removed or deactivated so the OSA is not prevented from opening, viewing, or printing the file;

(multimedia) objects;

- (e) not contain any embedded scripts or executables, including sound or movie
- (f) have a file name that ends with .pdf;
- (g) be free of worms, viruses or other malicious content (a file with such content shall be deleted by the OSA);
- (h) be “flattened” into a single layer file prior to submission;
- (i) not contain any active hypertext links, or any internal/external links (although it is permissible for the file to textually reference a URL as a disabled link);
- (j) be saved at 300 dots per inch (DPI) (lower DPI makes the file hard to read and higher DPI makes the file too large);
- (k) have a name that starts with the OSA agency number, followed by the agency name, the fiscal year, and “final”; and
- (l) be searchable.

(4) The IPA shall deliver to the agency the number of copies of the audit report indicated in the audit contract only after the state auditor has officially released the audit report with a “release letter”.

(a) The audited agency may waive the 5-day waiting period required by Section 12-6-5 NMSA 1978. To do so, the agency’s governing authority or the governing authority’s designee must provide written notification to the OSA of the waiver. The notification must be signed by the agency’s governing authority or the governing authority’s designee and be sent via letter, e-mail or fax to the attention of the state auditor. The OSA encourages agencies wishing to waive the five-day waiting period to provide the written notification *prior* to the submission of the final report to the OSA.

(b) The IPA shall deliver to the agency the number of copies of the audit report indicated in the audit contract only after the state auditor has officially released the audit report with a “release letter”. Release of the audit report to the agency or the public prior to it being officially released by the state auditor shall result in an audit finding.

(5) After the release of a report, the OSA shall provide DFA and the legislative finance committee with notification that the report is available on the OSA website.

(6) If an audit report is reissued pursuant to AU-C 560, subsequent events and subsequently discovered facts, or AAG GAS 13.29-.30 for uniform guidance compliance reports, the reissued audit report shall be submitted to the OSA with a cover letter addressed to the state auditor. The cover letter shall explain that:

- (a) the attached report is a “reissued” report;
- (b) the circumstances that caused the reissuance; and
- (c) a summary of the changes that appear in the reissued report. The OSA shall subject the reissued report to the report review process and upon completion of that report review process, shall issue a “release letter.” The contents of the reissued audit report are subject to the confidentiality requirements described in Subsection M of 2.2.2.10 NMAC. Agency management and the IPA are responsible for ensuring that the latest version of the report is provided to each recipient of the prior version of the report. The OSA shall notify the appropriate oversight agencies regarding the updated report on the OSA website.

(7) If changes to a released audit report are submitted to the OSA, and the changes do not rise to the level of requiring a reissued report, the IPA shall submit a cover letter addressed to the agency, with a copy to the state auditor, which includes the following minimum elements:

- (a) a statement that the changes did not rise to the level of requiring a reissued report;
- (b) a description of the circumstances that caused the resubmitted updated report; and
- (c) a summary of the changes that appear in the resubmitted updated report compared to the prior released report. Agency management and the IPA are responsible for ensuring that the latest version of the resubmitted report is provided to each recipient of the prior version of the report. The OSA shall notify the appropriate oversight agencies regarding the updated report on the OSA website.

C. Required status reports: For an agency that has failed to submit audit or agreed-upon procedures reports as required by this rule, and has therefore been designated as “at risk” due to late reports, the state auditor requires the agency to submit written status reports to the OSA on each March 15, June 15, September 15, and December 15 that the agency is not in compliance with this rule. Status reports are not required for agencies that are included on the “at risk” list solely due to an adverse or disclaimed independent auditor’s opinion. The status report shall be signed by a member of the agency’s governing authority, a designee of the governing authority or a member of the agency’s top management. If the agency has a contract with an IPA to conduct the audit or

perform the AUP engagement, the agency must send the IPA a copy of the quarterly status report. IPAs engaged to audit or perform AUP engagements for agencies with late reports are responsible for assisting these agencies in complying with the reporting requirements of this section. Failure to do so shall be noted by the OSA and taken into account during the IPA Firm Profile evaluation process. At a minimum, the quarterly written status report shall include:

- (1) a detailed explanation of the agency's efforts to complete and submit its audit or agreed-upon procedures;
- (2) the current status of any ongoing audit or agreed-upon procedures work;
- (3) any obstacles encountered by the agency in completing its audit or agreed-upon procedures; and
- (4) a projected completion date for the financial audit or agreed-upon procedures report.

[2.2.2.9 NMAC - Rp, 2 2.2.9 NMAC, 3/28/2023; A, xx/xx/2024]

2.2.2.10 GENERAL CRITERIA:

A. Annual financial and compliance audits:

(1) The financial audit shall cover the entire financial reporting entity including the primary government and the component units of the primary government, if any. For any financial and compliance audit the agency should produce all documents necessary to conduct the engagement.

(a) The primary government shall determine whether an agency that is a separate legal entity from the primary government is a component unit of the primary government as defined by GASBS 14, 39, 61, and 80 (as amended). The flowchart at GASBS 61.68 may be useful in making this determination. The primary government shall notify all other agencies determined to be component units by September 15 of the subsequent fiscal year. Failure to meet this due date results in a compliance finding. IPAs shall use GASB guidelines as found in relevant GASBS to determine the correct presentation of the component unit. All agencies that meet the criteria to be a component unit of the primary government shall be included with the audited financial statements of the primary government by discrete presentation or blended, as appropriate. Component units are reported using the government financial reporting format if they have one or more of the characteristics described at AAG SLV 1.01. If a component unit does not qualify to be reported using the governmental format and is not statutorily required to be reported using the governmental format, that fact shall be explained in the notes to the financial statements (summary of significant accounting policies: financial reporting entity). If there was a change from the prior year's method of presenting a component unit or change in component units reported, the notes to the financial statements shall disclose the reason(s) for the change.

(b) If a primary government has no component units, that fact shall be disclosed in the notes to the financial statements (summary of significant accounting policies: financial reporting entity). If the primary government has component units that are not included in the financial statements due to materiality, that fact shall also be disclosed in the notes.

(c) The state auditor requires component unit(s) to be audited by the same audit firm that audits the primary government (except for public housing authority component units that are statutorily exempt from this requirement, and the statewide ACFR). For clarification, housing departments of a local government or a regional housing authority are not exempt from this requirement. Requests for exemption from this requirement shall be submitted in writing by the primary government to the state auditor. If the request to use a different auditor for the component unit is approved in writing by the state auditor, the following requirements shall be met:

- (i) the IPAs of the primary government and all component units shall consider and comply with the requirements of AU-C 600;
- (ii) the group engagement partner shall agree that the group engagement team will be able to obtain sufficient appropriate audit evidence through the use of the group engagement team's work or use of the work of the component auditors (AU-C 600.15);
- (iii) the component unit auditor selected shall appear on the OSA list of approved IPAs;
- (iv) all bid and auditor selection processes shall comply with the requirements of this rule;
- (v) the OSA standard contract template shall be used by both the primary government and the component unit;

(vi) the primary government, the primary engagement partner, management of the component unit, and the component unit auditor shall all coordinate their efforts to ensure that the audit reports of the component unit and the primary government are submitted by the applicable due dates;

(vii) all component unit findings shall be disclosed in the primary government's audit report (except the statewide ACFR, which shall include only component unit findings that are significant to the state as a whole); and

(viii) any separately issued component unit financial statements and associated auditors' reports shall be submitted to the state auditor by the due date in Subsection A of 2.2.2.9 NMAC for the review process described in Subsection A of 2.2.2.13 NMAC.

(d) With the exception of the statewide ACFR, the following SI pertaining to component units for which separately issued financial statements are not available shall be audited and opined on as illustrated in AAG SLV 16.103 example A-15: financial statements for each of the component unit's major funds, combining and individual fund financial statements for all of the component unit's non-major funds, and budgetary comparison statements for the component unit's general fund and major special revenue funds that have legally adopted annual budgets (AAG SLV 3.22).

(2) Audits of agencies shall be comprised of a financial and compliance audit of the financial statements and schedules as follows:

(a) The level of planning materiality described at AAG SLV 4.72-4.73 and exhibit 4-1 shall be used. Planning materiality for component units is at the individual component unit level.

(b) The scope of the audit includes the following statements and disclosures which the auditor shall audit and give an opinion on. The basic financial statements (as defined by GASB and displayed in AAG SLV exhibit 4-1) consisting of:

(i) the governmental activities, the business-type activities, and the aggregate discretely presented component units;

(ii) each major fund and the aggregate remaining fund information;

(iii) budgetary comparison statements for the general fund and major special revenue funds that have legally adopted annual budgets (when budget information is available on the same fund structure basis as the GAAP fund structure, the state auditor requires that the budgetary comparison statements be included as part of the basic financial statements consistent with GASBS 34 fn. 53, as amended, and AAG SLV 11.12 and 11.13); and

(iv) the related notes to the financial statements.

(c) Budgetary comparison statements for the general fund and major special revenue funds presented on a fund, organization, or program structure basis because the budgetary information is not available on the GAAP fund structure basis for those funds shall be presented as RSI pursuant to GASBS 41.

(d) The auditor shall apply procedures and report in the auditor's report on the following RSI (if applicable) pursuant to AU-C 730:

(i) management's discussion and analysis (GASBS 34.8-.11);

(ii) RSI data required by GASBS 67 and 68 for defined benefit pension plans;

(iii) RSI schedules required by GASBS 43 and 74 for postemployment benefit plans other than pension plans;

(iv) RSI schedules required by GASBS 45 and 75 regarding employer accounting and financial reporting for postemployment benefits other than pensions; and

(v) infrastructure modified approach schedules derived from asset management systems (GASBS 34.132-133).

(e) The audit engagement and audit contract compensation include an AU-C 725 opinion on the SI schedules presented in the audit report. The auditor shall subject the information on the SI schedules to the procedures required by AU-C 725. The auditor shall report on the remaining SI in an other-matter paragraph following the opinion paragraph in the auditor's report on the financial statements pursuant to AU-C 725. With the exception of the statewide ACFR, the following SI schedules are required to be included in the AU-C 725 opinion if the schedules are applicable to the agency:

(i) primary government combining and individual fund financial statements for all non-major funds (GASBS 34.383);

(ii) the schedule of expenditures of federal awards required by uniform guidance;

- (iii) the schedule of pledged collateral required by Subsection P of 2.2.2.10 NMAC;
- (iv) the FDS of housing authorities pursuant to Subsection B of 2.2.2.12 NMAC;
- (v) the school district schedule of cash reconciliation required by Subsection C of 2.2.2.12 NMAC. In addition, the school district schedule of cash reconciliation SI shall be subjected to audit procedures that ensure the cash per the schedule reconciles to the PED reports as required by Subsection C of 2.2.2.12 NMAC;
- (vi) any other SI schedule required by this rule.

B. Governmental auditing, accounting and financial reporting standards: The audits shall be conducted in accordance with:

- (1) the most recent revision of GAGAS issued by the United States government accountability office;
- (2) U.S. auditing standards-AICPA (clarified);
- (3) uniform administrative requirements, cost principles, and audit requirements for federal awards (uniform guidance);
- (4) AICPA audit and accounting guide, government auditing standards and single audits, (AAG GAS) latest edition;
- (5) AICPA audit and accounting guide, state and local governments (AAG SLV) latest edition; and
- (6) 2.2.2 NMAC, requirements for contracting and conducting audits of agencies, latest edition.

C. Financial statements and notes to the financial statements: The financial statements and notes to the financial statements shall be prepared in accordance with accounting principles generally accepted in the United States of America. Governmental accounting principles are identified in the government accounting standards board (GASB) codification, latest edition. IPAs shall follow interpretations, technical bulletins, and concept statements issued by GASB, other applicable pronouncements, and GASB illustrations and trends for financial statements. In addition to the revenue classifications required by NCGAS 1.110, the OSA requires that the statement of revenues, expenditures, and changes in fund balance - governmental funds include classifications for intergovernmental revenue from federal sources and intergovernmental revenue from state sources, as applicable.

D. Requirements for preparation of financial statements:

- (1) The financial statements presented in audit reports shall be prepared from the agency's books of record and contain amounts rounded to the nearest dollar.
- (2) The financial statements are the responsibility of the agency. The agency shall maintain adequate accounting records, prepare financial statements in accordance with accounting principles generally accepted in the United States of America, and provide complete, accurate, and timely information to the IPA as requested to meet the audit report due date imposed in Subsection A of 2.2.2.9 NMAC.
- (3) If there are differences between the financial statements and the books, the IPA shall provide to the agency the adjusting journal entries and the supporting documentation that reconciles the financial statements in the audit report to the books.
- (4) If the IPA prepared the financial statements in their entirety from the client-provided trial balance or underlying accounting records the IPA should conclude significant threats to independence exist and shall document the threats and safeguards applied to mitigate the threats to an acceptable level. If the threats cannot be documented as mitigated the IPA may appropriately decide to decline to provide the service. IPAs should refer to the GAGAS conceptual framework to evaluate independence. The fact that the auditor prepared the financial statements from the client-provided trial balance or underlying records shall be disclosed on the exit conference page of the audit report.

E. Audit documentation requirements:

- (1) The IPA's audit documentation shall be retained for a minimum of five-years from the date shown on the opinion letter of the audit report or longer if requested by the federal oversight agency, cognizant agency, or the state auditor. Audit documentation, including working papers, are the property of the IPA or responsible certificate holder per Subsection A of Section 61-28B-25 NMSA 1978. Audit documentation includes all documents used to support any opinions or findings included in the report. The state auditor shall have access to the audit documentation at the discretion of the state auditor.
- (2) When requested by the state auditor, all of the audit documentation shall be delivered to the state auditor by the due date indicated in the request. State auditor review of audit documentation does not

transfer the ownership of the documents. Ownership of the audit documentation is maintained by the IPA or responsible certificate holder.

(3) The audit documentation of a predecessor IPA shall be made available to a successor IPA in accordance with AU-C 510.07 and 510.A3 to 510.A11, and the predecessor auditor's contract. Any photocopy costs incurred shall be borne by the requestor. If the successor IPA finds that the predecessor IPA's audit documentation does not comply with applicable auditing standards and this rule, or does not support the financial data presented in the audit report, the successor IPA shall notify the state auditor in writing specifying all deficiencies. If the state auditor determines that the nature of deficiencies indicate that the audit was not performed in accordance with auditing or accounting standards generally accepted in the United States of America and related laws, rules and regulations, and this rule, any or all of the following actions may be taken:

(a) the state auditor may require the predecessor IPA firm to correct its working papers and reissue the audit report to the agency, federal oversight or cognizant agency and any others receiving copies;

(b) the state auditor may deny or limit the issuance of future audit contracts; or

(c) the state auditor may refer the predecessor IPA to the New Mexico public accountancy board for possible licensure action.

F. Auditor communication requirements:

(1) The IPA shall comply with the requirements for auditor communication with those charged with governance as set forth in AU-C 260 and GAGAS 6.06 and 6.07.

(2) After the agency and IPA have an approved audit contract in place, the IPA shall prepare a written and dated engagement letter during the planning stage of a financial audit, addressed to the appropriate officials of the agency, keeping a copy of the signed letter as part of the audit documentation. In addition to meeting the requirements of the AICPA professional standards and the GAGAS requirements, the engagement letter shall state that the engagement shall be performed in accordance with 2.2.2 NMAC.

(3) The audit engagement letter shall not include any fee contingencies. The engagement letter shall not be interpreted as amending the contract. Nothing in the engagement letter can impact or change the amount of compensation for the audit services. Only a contract amendment submitted pursuant to Subsection N of 2.2.2.8 NMAC may amend the amount of compensation for the audit services set forth in the contract.

(4) A separate engagement letter and list of client prepared documents is required for each fiscal year audited. The IPA shall provide a copy of the engagement letter and list of client prepared documents immediately upon request from the state auditor.

(5) The IPA shall conduct an audit entrance conference with the agency with representatives of the agency's governing authority and top management, which may include representatives of any component units (housing authorities, charter schools, hospitals, foundations, etc.), if applicable. The OSA has the authority to notify the agency or IPA that the state auditor shall be informed of the date of the entrance conference and any progress meetings. If such notification is received, the IPA and agency shall invite the state auditor or the auditor's designee to attend all such conferences no later than 72 hours before the proposed conference or meeting.

(6) All communications with management and the agency's oversight officials during the audit, regarding any instances of non-compliance or internal control weaknesses, shall be made in writing. The auditor shall obtain and report the views of responsible officials of the audited agency concerning the audit findings, pursuant to GAGAS 6.57-6.60. Any violation of law or good accounting practice, including instances of non-compliance or internal control weaknesses, shall be reported as audit findings per Section 12-6-5 NMSA 1978. Separate management letter comments shall not be issued as a substitute for such findings.

G. Reverting or non-reverting funds: Legislation can designate a fund as reverting or non-reverting. The IPA shall review the state law that appropriated funds to the agency to confirm whether any unexpended, unencumbered balance of a specific appropriation shall be reverted and to whom. The law may also indicate the due date for the required reversion. Appropriate audit procedures shall be performed to evaluate compliance with the law and accuracy of the related liability account balances due to other funds, governmental agencies, or both. The financial statements and the accompanying notes shall fully disclose the reverting or non-reverting status of a fund or appropriation. The financial statements shall disclose the specific legislation that makes a fund or appropriation non-reverting and any minimum balance required. If non-reverting funds are commingled with reverting appropriations, the notes to the financial statements shall disclose the methods and amounts used to calculate reversions. For more information regarding state agency reversions, see Subsection A of 2.2.2.12 NMAC and the department of finance and administration (DFA) white papers "calculating reversions to the state general fund," and "basis of accounting-modified accrual and the budgetary basis." The statewide ACFR is exempt from this requirement.

H. Referrals and risk advisories: The Audit Act (Section 12-6-1 *et seq.* NMSA 1978) states 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.” (Section 12-6-3 NMSA 1978). Further, audits of New Mexico governmental agencies “shall be conducted in accordance with generally accepted auditing standards and rules issued by the state auditor.” (Section 12-6-3 NMSA 1978).

(1) In an effort to ensure that the finances of state and local governments are thoroughly examined, OSA may provide IPAs with written communications to inform the IPA that OSA received information that may suggest elevated risk in specific areas relevant to a particular agency’s annual financial and compliance audit. These communications shall be referred to as “referrals.” Referrals are considered confidential audit documentation. Referrals may relate to any topic, including the scope of the annual financial and compliance audit. IPAs shall take the circumstances described in OSA referral communications into account in their risk assessment and perform such procedures as, in the IPA’s professional judgment, are necessary to determine what further actions, if any, in the form of additional disclosures, findings, and recommendations are appropriate in connection with the annual audit of the agency. After the conclusion of fieldwork but at least 14 days prior to submitting the draft annual audit report to the OSA for review, IPAs shall provide written confirmation to the OSA that the IPA took appropriate action in response to the referral. This written confirmation shall be submitted separately from any draft report and addressed to the attention of the OSA’s special investigations division. The written confirmation shall be submitted electronically to SIDreferrals@osa.state.nm.us and shall respond to all aspects of the referral and list any findings associated with the subject matter of the referral. IPAs shall retain adequate documentation in the audit workpapers to support the written confirmation to OSA that the IPA took appropriate action in response to the referral. As outlined in 2.2.2.13 NMAC the OSA may review IPA workpapers associated with the annual audit of any agency. OSA workpaper review procedures shall include examining the IPA documentation associated with referrals. Insufficient or inadequate documentation may result in deficiencies noted in the workpaper review letter and may negatively impact the IPA during the subsequent firm profile review process. In accordance with Subsection D of 2.2.2.8 NMAC, an IPA may be placed on restriction if an IPA refuses to comply with OSA referrals in a timely manner.

(2) OSA may issue written communications to inform agencies and IPAs that OSA received information that suggests elevated risk in specific areas relevant to the annual financial and compliance audits of some agencies. These communications shall be referred to as “risk advisories.” Risk advisories shall be posted on the OSA website in the following location: https://www.saonm.org/risk_advisories. Risk advisories may relate to any topic relevant to annual financial and compliance audits of New Mexico agencies. IPAs shall take the circumstances described in OSA risk advisories into account in their risk assessment and perform such procedures and testwork as, in the IPA’s professional judgment, are necessary to determine what further action, if any, in the form of disclosure, findings and recommendations are appropriate in connection with the annual audit of the agency.

I. State auditor workpaper requirement: The state auditor requires that audit workpapers include a written audit program for fund balance and net position that includes tests for proper classification of fund balance pursuant to GASBS 54 and proper classification of net position pursuant to GASBS 34.34-.37 (as amended) and GASBS 46.4-.5 (as amended).

J. State compliance audit requirements: An IPA shall identify significant state statutes, rules, and regulations applicable to the agency under audit and perform tests of compliance. In designing tests of compliance, IPAs may reference AU-C 250 relating to consideration of laws and regulations in an audit of financial statements and AU-C 620 relating to using the work of an auditor’s specialist. As discussed in AU-C 250.A23, in situations where management or those charged with governance of the agency, or the agency’s in-house or external legal counsel, do not provide sufficient information to satisfy the IPA that the agency is in compliance with an applicable requirement, the IPA may consider it appropriate to consult the IPA’s own legal counsel. AU-C 620.06 and 620.A1 discuss the use of an auditor’s specialist in situations where expertise in a field other than accounting or auditing is necessary to obtain sufficient, appropriate audit evidence, such as the interpretation of contracts, laws and 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. Gabaldon*, 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.
- (21) The New Mexico opioid allocation agreement.

K. Federal requirements: IPAs shall conduct their audits in accordance with the requirements of the following government pronouncements and shall test federal compliance audit requirements as applicable:

- (1) generally accepted government auditing standards (GAGAS) issued by the United States government accountability office, most recent revision;
- (2) uniform administrative requirements, cost principles, and audit requirements for federal awards;
- (3) compliance supplement, latest edition; and
- (4) internal revenue service (IRS) employee income tax requirements. IRS Publication 15-B, employer's tax guide to fringe benefits, available online, provides detailed information regarding the taxability of fringe benefits.

L. Audit finding requirements:

- (1) Communicating findings: IPAs shall communicate findings in accordance with generally accepted auditing standards and the requirements of GAGAS 6.17-6.30. All finding reference numbers shall follow a standard format with the four-digit audit year, a hyphen, and a three-digit sequence number (e.g. 20XX-001, 20XX-002 ... 20XX-999). All prior year findings shall include the finding numbers used when the finding was first

reported under historical numbering systems in brackets, following the current year finding reference number (e.g., 2021-001 (2020-003)) to enable the report user to see what year the finding originated and how it was identified in previous years. Finding reference numbers for single audit findings reported on the data collection form shall match those reported in the schedule of findings and questioned costs and the applicable auditor's report. Depending on the IPA's classification of the finding, the finding reference number shall be followed by one of the following descriptions: "material weakness"; "significant deficiency"; "material non-compliance"; "other non-compliance"; or "other matters."

(a) IPAs shall evaluate deficiencies to determine whether individually or in combination they are significant deficiencies or material weaknesses in accordance with AU-C 260.

(b) Findings that meet the requirements described in AAG GAS 4.12 shall be included in the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards. AAG GAS 13.35 table 13-2 provides guidance on whether a finding shall be included in the schedule of findings and questioned costs.

(c) Section 12-6-5 NMSA 1978 requires that "each report set out in detail, in a separate section, any violation of law or good accounting practices found by the audit or examination."

(i) When auditors detect violations of law or good accounting practices that shall be reported per Section 12-6-5 NMSA 1978, but that do not rise to the level of significant deficiencies or material weaknesses, such findings are considered to warrant the attention of those charged with governance due to the statutory reporting requirement. The auditor shall communicate such violations in the "compliance and other matters" paragraph in the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards.

(ii) Findings required by Section 12-6-5 NMSA 1978 shall be presented in a separate schedule of findings labeled "Section 12-6-5 NMSA 1978 findings". This schedule shall be placed in the back of the audit report following the financial statement audit and federal award findings. Per AAG GAS 13.49 there is no requirement for such findings to be included or referenced in the uniform guidance compliance report.

(d) Each audit finding (including current year and unresolved prior-year findings) shall specifically state and describe the following:

(i) condition (provides a description of a situation that exists and includes the extent of the condition and an accurate perspective, the number of instances found, the dollar amounts involved, if specific amounts were identified, and for repeat findings, management's progress or lack of progress towards implementing the prior year planned corrective actions);

(ii) criteria (identifies the required or desired state or what is expected from the program or operation; cites the specific section of law, regulation, ordinance, contract, or grant agreement if applicable);

(iii) effect (the logical link to establish the impact or potential impact of the difference between the situation that exists (condition) and the required or desired state (criteria); demonstrates the need for corrective action in response to identified problems or relevant risks);

(iv) cause (identifies the reason or explanation for the condition or the factors responsible for the difference between what the auditors found and what is required or expected; the cause serves as a basis for the recommendation);

(v) recommendation addressing each condition and cause; and

(vi) agency response (the agency's comments about the finding, including specific planned corrective actions with a timeline and designation of what employee position(s) are responsible for meeting the deadlines in the timeline).

(e) Uniform guidance regarding single audit findings (uniform guidance 200.511): The auditee is responsible for follow-up and corrective action on all audit findings. As a part of this responsibility, the auditee shall prepare a summary schedule of prior audit findings and a corrective action plan for current year audit findings in accordance with the requirements of uniform guidance 200.511. The corrective action plan and summary schedule of prior audit findings shall include findings relating to the financial statements which shall be reported in accordance with GAGAS. The summary schedule of prior year findings and the corrective action plan shall be included in the reporting package submitted to the federal audit clearinghouse (AAG GAS 13.49 fn 38). In addition to being included in the agency response to each audit finding, the corrective action plan shall be provided on the audited agency's letterhead in a document separate from the auditor's findings. (COFAR frequently asked questions on the office of management and budget's uniform administrative requirements, cost principles, and audit requirements for federal awards at 2 CFR 200, Section 511-1).

(f) All audit reports shall include a summary of audit results preceding the presentation of audit findings (if any). The summary of audit results shall include the type of auditor report issued and whether the following categories of findings for internal control over financial reporting were identified: material weakness, significant deficiency, and material noncompliance. AUP reports completed pursuant to 2.2.2.16 NMAC are not required to include a summary of audit results.

(2) Prior year findings:

(a) IPAs shall comply with the requirements of the most recent version of GAGAS relating to findings and recommendations from previous audits and attestation engagements. In addition, IPAs shall report the status of *all* prior-year findings and *all* findings from special audits performed under the oversight of the state auditor in the current year audit report in a summary schedule of prior year audit findings. The summary schedule of prior year audit findings shall include the prior year finding number, the title, and whether the finding was resolved, repeated, or repeated and modified in the current year. No other information shall be included in the summary schedule of prior year audit findings. All findings from special audits performed under the oversight of the state auditor shall be included in the findings of the annual financial and compliance audits of the related fiscal year. IPAs shall consider including findings from special audits in annual audit reports.

(b) Uniform guidance regarding single audit prior year findings (uniform guidance 200.511): The auditor shall follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with the uniform guidance, and report, as a current-year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding (AAG GAS 13.53).

(3) Current-year audit findings: Written audit findings shall be prepared and submitted to management of the agency as soon as the IPA becomes aware of the findings so the agency has time to respond to the findings prior to the exit conference. The agency shall prepare “planned corrective actions” as required by GAGAS 6.57 and 6.58. The agency shall respond, in writing, to the IPA’s audit findings within 10 business days. Lack of agency responses within the 10 business days does not warrant a delay of the audit report. The agency’s responses to the audit findings and the “planned corrective actions” shall be included in the finding after the recommendation. If the IPA disagrees with the management’s comments in response to a finding, they may explain in the report their reasons for disagreement, after the agency’s response (GAGAS 6.59). Pursuant to GAGAS 6.60, “if the audited agency refuses to provide comments or is unable to provide comments within a reasonable period of time, the auditors may issue the report without receiving comments from the audited agency. In such cases, the auditors should indicate in the report that the audited agency did not provide comments.”

(4) If appropriate in the auditor’s professional judgment, failure to submit the completed audit contract to the OSA by the due date at Subsection F of 2.2.2.8 NMAC may be reported as a current year compliance finding.

(5) If an agency has entered into any professional services contract with an IPA with a scope of work that relates to fraud, waste, or abuse, and the contract was not approved by the state auditor, the IPA shall report a finding of non-compliance with Paragraph (2) of Subsection C of 2.2.215 NMAC.

(6) If an agency subject to the procurement code failed to meet the requirement to have a certified chief procurement officer during the fiscal year, the IPA shall report a finding of non-compliance with Section 1.4.1.94 NMAC.

(7) Component unit audit findings shall be reported in the primary government’s financial audit report. This is not required for the statewide ACFR unless a finding of a legally separate component unit is significant to the state as a whole.

(8) Except as discussed in Subsections A and E of 2.2.2.12 NMAC, release of any portion of the audit report by the IPA or agency prior to being officially released by the state auditor is a violation of Section 12-6-5 NMSA 1978 and requires a compliance finding in the audit report.

(9) In the event that an agency response to a finding indicates in any way that the OSA is the cause of the finding, the OSA may require that a written response from the OSA be included in the report, below the other responses to that finding.

M. Exit conference and related confidentiality issues:

(1) The IPA shall hold an exit conference with representatives of the agency’s governing authority and top management, which may include representatives of any component units (housing authorities, charter schools, hospitals, foundations, etc.), if applicable. The OSA has the authority to notify the agency or IPA that the state auditor shall be informed of the date of any progress meetings and the exit conference. If such notification is received, the IPA and agency shall invite the state auditor to attend all such conferences. If component unit representatives cannot attend the combined exit conference, a separate exit conference shall be held

with the component unit's governing authority and top management. The exit conference and presentation to governance shall occur in the forum agreed to by the agency and the IPA, to include virtual or telephonic options. The OSA reserves the right to require an in-person exit conference and presentation to the board. The date of the exit conference(s) and the names and titles of personnel attending shall be stated in the last page of the audit report.

(2) The IPA, with the agency's cooperation, shall provide to the agency for review a draft of the audit report (stamped "draft"), a list of the "passed audit adjustments," and a copy of all the adjusting journal entries at or before the exit conference. The draft audit report shall include, at minimum, the following elements: independent auditor's report, basic financial statements, audit findings, summary schedule of prior year audit findings, and the reports on internal control and compliance required by government auditing standards and uniform guidance.

(3) Agency personnel and the agency's IPA shall not release information to the public relating to the audit until the audit report is released by the OSA, and has become a public record. This does not preclude an agency from submitting financial statements and notes to the financial statements, clearly marked as "draft" or "unaudited" to federal or state oversight agencies or bond rating agencies. Any draft financial statements provided to federal or state oversight agencies or to bond rating agencies shall exclude draft auditor opinions and findings, and any pages including references to auditor opinions or findings.

(4) Once the audit report is officially released to the agency by the state auditor (by a release letter) and the required waiting period of five calendar days has passed, unless waived by the agency in writing as described in Subparagraph (a) of Paragraph (4) of Subsection B of 2.2.2.9 NMAC, the audit report shall be presented by the IPA, to a quorum of the governing authority of the agency at a meeting held in accordance with the Open Meetings Act, if applicable. This requirement only applies to agencies with a governing authority, such as a board of directors, board of county commissioners, or city council, which is subject to the Open Meetings Act. The IPA shall ensure that the required communications to those charged with governance are made in accordance with AU-C 260.12 to 260.14.

(5) At all times during the audit and after the audit report becomes a public record, the IPA shall follow applicable standards and 2.2.2 NMAC regarding the release of any information relating to the audit. Applicable standards include but are not limited to the AICPA Code of Conduct ET Section 1.700.001 and related interpretations and guidance, and GAGAS 6.53-6.55 and GAGAS 6.63-6.65. The OSA and the IPA shall not disclose audit documentation if such disclosure would undermine the effectiveness or integrity of the audit process. AU-C 230.A29.

N. Possible violations of criminal statutes in connection with financial affairs:

(1) IPAs shall comply with the requirements of GAGAS 6.19-6.24 relating to fraud, noncompliance with provisions of laws, regulations, contracts and grant agreements, waste, and abuse. Relating to contracts and grant agreements, IPAs shall extend the AICPA requirements pertaining to the auditors' responsibilities for laws and regulations to also apply to consideration of compliance with provisions of contracts or grant agreements. Concerning abuse, if an IPA becomes aware of abuse that could be quantitatively, or qualitatively material to the financial statements or other financial data significant to the audit objectives, the IPA shall apply audit procedures specifically directed to ascertain the potential effect on the financial statements or other financial data significant to the audit objectives.

(2) Pursuant to Section 12-6-6 NMSA 1978 (criminal violations), an agency, LPB, or IPA shall notify the state auditor immediately~~[-in writing,]~~ upon discovery of any ~~[alleged]~~ apparent violation of a criminal statute in connection with financial affairs. If an agency or IPA has already made a report to law enforcement that fact shall be included in the notification. ~~[The notification shall be sent by e-mail to reports@osa.state.nm.us, by facsimile, or by US mail. Notifications shall not be made through the fraud hotline.]~~ If not immediately known, a follow-up ~~[The]~~ notification shall include an estimate of the dollar amount involved, if known or estimable, and a description of the ~~[alleged]~~ apparent violation, including names of persons involved and any action taken or planned. ~~[The state auditor may cause the financial affairs and transactions of the agency to be audited in whole or in part pursuant to Section 12-6-3 NMSA 1978 and 2.2.2.15 NMAC. If the state auditor does not designate an agency for audit, an agency shall follow the provisions of 2.2.2.15 NMAC when entering into a professional services contract for a special audit, performance audit, non-attest engagement, or attestation engagement regarding the financial affairs and transactions of the agency relating to financial fraud, waste and abuse.]~~

~~[(3) In accordance with Section 12-6-6 NMSA 1978, the state auditor, immediately upon discovery of any violation of a criminal statute in connection with financial affairs, shall report the violation to the proper prosecuting officer and furnish the officer with all data and information in the auditor's possession relative to the violation.]~~

O. Special revenue funds authority: The authority for creation of special revenue funds and any minimum balance required shall be shown in the audit report (i.e., cite the statute number, code of federal regulation, executive order, resolution number, or other specific authority) on the divider page before the combining financial statements or in the notes to the financial statements. This requirement does not apply to the statewide ACFR.

P. Public monies:

(1) All monies coming into all agencies (i.e., vending machines, fees for photocopies, telephone charges, etc.) shall be considered public monies and be accounted for as such. For state agencies, all revenues generated shall be authorized by legislation (MAPS FIN 11.4).

(2) If the agency has investments in securities and derivative instruments, the IPA shall comply with the requirements of AU-C 501.04-.10. If the IPA elects to use the work of an auditor's specialist to meet the requirements of AU-C 501, the requirements of AU-C 620 shall also be met.

(3) Pursuant to Section 12-6-5 NMSA 1978, each audit report shall include a list of individual deposit and investment accounts held by the agency. The information presented in the audit report shall include at a minimum:

(a) name of depository (i.e., bank, credit union, state treasurer, state investment council, etc.);

(b) account name;

(c) type of deposit or investment account (also required in separate component unit audit reports):

(i) types of deposit accounts include non-interest bearing checking, interest bearing checking, savings, money market accounts, certificates of deposit, etc.; and

(ii) types of investment accounts include state treasurer general fund investment pool (SGFIP), state treasurer local government investment pool (LGIP), U.S. treasury bills, securities of U.S. agencies such as Fannie Mae (FNMA), Freddie Mac (FHLMC), government national mortgage association (GNMA), Sallie Mae, small business administration (SBA), federal housing administration (FHA), etc.

(d) account balance of deposits and investments as of the balance sheet date;

(e) reconciled balance of deposits and investments as of the balance sheet date as reported in the financial statements; and

(f) for state agencies only, statewide human resources accounting and management reporting system (SHARE) fund number. In auditing the balance of a state agency's investment in the SGFIP, the IPA shall review the individual state agency's cash reconciliation procedures and determine whether those procedures would reduce the agency's risk of misstatement in the investment in SGFIP, and whether the agency is actually performing those procedures. The IPA shall also take into consideration the complexity of the types of cash transactions that the state agency enters into and whether the agency processes its deposits and payments through SHARE. The IPA shall use professional judgment to determine each state agency's risk of misstatement in the investment in the SGFIP and write findings and modify opinions as deemed appropriate by the IPA.

(4) Pledged collateral:

(a) All audit reports shall disclose applicable collateral requirements in the notes to the financial statements. In addition, there shall be a SI schedule or note to the financial statements that discloses the collateral pledged by each depository for public funds. The SI schedule or note shall disclose the type of security (i.e., bond, note, treasury, bill, etc.), security number, committee on uniform security identification procedures (CUSIP) number, fair market value and maturity date.

(b) Pursuant to Section 6-10-17 NMSA 1978, the pledged collateral for deposits in banks and savings and loan associations shall have an aggregate value equal to one-half of the amount of public money held by the depository. If this requirement is not met the audit report shall include a finding. No security is required for the deposit of public money that is insured by the federal deposit insurance corporation (FDIC) or the national credit union administration (NCUA) in accordance with Section 6-10-16 NMSA 1978. Collateral requirements shall be calculated separately for each bank and disclosed in the notes.

(c) All applicable GASB 40 disclosure requirements relating to deposit and investment risk shall be met. In accordance with GASBS 40.8, relating to custodial credit risk, the notes to the financial statements shall disclose the dollar amount of deposits subject to custodial credit risk, and the type of risk the deposits are exposed to. To determine compliance with the fifty percent pledged collateral requirement of Section 6-10-17 NMSA 1978, the disclosure shall include the dollar amount of each of the following for each financial institution: fifty percent pledged collateral requirement per statute, total pledged collateral, uninsured and uncollateralized.

(d) Repurchase agreements shall be secured by pledged collateral having a market value of at least one hundred two percent of the contract per Subsection H of Section 6-10-10 NMSA 1978. To determine compliance with the one hundred two percent pledged collateral requirement of Section 6-10-10 NMSA 1978, the disclosure shall include the dollar amount of the following for each repurchase agreement: one hundred-two percent pledged collateral requirement per statute, and total pledged collateral.

(e) Per Subsection A of Section 6-10-16 NMSA 1978, “deposits of public money shall be secured by: securities of the United States, its agencies or instrumentalities; securities of the state of New Mexico, its agencies, instrumentalities, counties, municipalities or other subdivisions; securities, including student loans, that are guaranteed by the United States or the state of New Mexico; 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 letters of credit issued by a federal home loan bank.”

(f) Securities shall be accepted as security at market value pursuant to Subsection C of Section 6-10-16 NMSA 1978.

(g) State agency investments in the state treasurer’s general fund investment pool do not require disclosure of specific pledged collateral for amounts held by the state treasurer. However, the notes to the financial statements shall refer the reader to the state treasurer’s separately issued financial statements which disclose the collateral pledged to secure state treasurer cash and investments.

(h) If an agency has other “authorized” bank accounts, pledged collateral information shall be obtained from the bank and disclosed in the notes to the financial statements. The state treasurer monitors pledged collateral related to most state agency bank accounts. State agencies should not request the pledged collateral information from the state treasurer. In the event pledged collateral information specific to the state agency is not available, the following note disclosure shall be made: detail of pledged collateral specific to this agency is unavailable because the bank commingles pledged collateral for all state funds it holds. However, STO’s collateral bureau monitors pledged collateral for all state funds held by state agencies in such “authorized” bank accounts.

(5) Agencies that have investments in the state treasurer’s local government investment pool shall disclose the information required by GASBS 79 in the notes to their financial statements. Agencies with questions about the content of these required note disclosures may contact STO (<http://www.nmsto.gov>) for assistance.

Q. Budgetary presentation:

(1) Prior year balance included in budget:

(a) If the agency prepares its budget on the accrual or modified accrual basis, the statement of revenues and expenditures (budget and actual) or the budgetary comparisons shall include the amount of fund balance on the budgetary basis used to balance the budget.

(b) If the agency prepares its budget on the cash basis, the statement of revenues and expenditures (budget and actual) or the budgetary comparisons shall include the amount of prior-year cash balance used to balance the budget (or fund balance on the cash basis).

(2) The differences between the budgetary basis and GAAP basis revenues and expenditures shall be reconciled. If the required budgetary comparison information is included in the basic financial statements, the reconciliation shall be included on the statement itself or in the notes to the financial statements. If the required budgetary comparison is presented as RSI, the reconciliation to GAAP basis shall appear in either a separate schedule or in the notes to the RSI (AAG SLV 11.14). The notes to the financial statements shall disclose the legal level of budgetary control for the entity and any excess of expenditures over appropriations at the legal level of budgetary control. The legal level of budgetary control for local governments is at the fund level. The legal level of budgetary control for school districts is at the function level. The legal level of budgetary control for state agencies is explained at Subsection A of 2.2.2.12 NMAC. For additional information regarding the legal level of budgetary control the IPA may contact the applicable oversight agency (DFA, HED, or PED).

(3) Budgetary comparisons shall show the original and final appropriated budget (same as final budget approved by DFA, HED, or PED), the actual amounts on the budgetary basis, and a column with the variance between the final budget and actual amounts.

(a) If the budget structure for the general fund and major special revenue funds is similar enough to the GAAP fund structure to provide the necessary information, the basic financial statements shall include budgetary comparison statements for those funds.

(b) Budgetary comparisons for the general fund and major special revenue funds shall be presented as RSI if the agency budget structure differs from the GAAP fund structure enough that the budget information is unavailable for the general fund and major special revenue funds. An example of this

“perspective difference” would occur if an agency budgets by program with portions of the general fund and major special revenue funds appearing across various program budgets. In a case like that the budgetary comparison would be presented for program budgets and include information in addition to the general fund and major special revenue funds budgetary comparison data (GASBS 41.03 and .10).

R. Appropriations:

(1) Budget related findings:

(a) If actual expenditures exceed budgeted expenditures at the legal level of budgetary control, that fact shall be reported in a finding and disclosed in the notes to the financial statements.

(b) If budgeted expenditures exceed budgeted revenues (after prior-year cash balance and any applicable federal receivables used to balance the budget), that fact shall be reported in a finding. This type of finding shall be confirmed with the agency’s budget oversight entity (if applicable).

(2) Special, deficiency, specific, and capital outlay appropriations:

(a) Special, deficiency, specific, and capital outlay appropriations shall be disclosed in the notes to the financial statements. The original appropriation, the appropriation period, expenditures to date, outstanding encumbrances, unencumbered balances, and amounts reverted shall be shown in a SI schedule or in a note to the financial statements. 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.

(b) The accounting treatment of any unexpended balances shall be fully explained in the SI schedule or in a note to the financial statements regarding the special appropriations.

S. Consideration of internal control and risk assessment in a financial statement audit:

(1) Audits performed under this rule shall include tests of internal controls (manual or automated) over assertions about the financial statements and about compliance related to laws, regulations, and contract and grant provisions. IPAs and agencies are encouraged to reference the U.S. GAOs’ *Standards for Internal Control in the Federal Government*, known as the “*Green Book*”, which may be adopted by state, local, and quasi-governmental Agencies as a framework for an internal control system.

(2) The department of information technology is to engage in an SOC-2 compliance audit of the SHARE system annually, starting in 2024.

(3) The OSA may select additional agencies’ application systems of record for SOC Audit.

T. Required auditor’s reports:

(1) The AICPA provides examples of independent auditor’s reports in the appendix to chapter 4 of AAG GAS and appendix A to chapter 16 of AAG SLV. Guidance is provided in footnote 4 to appendix A to chapter 16 of AAG SLV regarding wording used when opining on budgetary statements on the GAAP basis. IPAs conducting audits under this rule shall follow the AICPA report examples. All independent auditor’s reports shall include a statement that the audit was performed in accordance with auditing standards generally accepted in the United States of America and with applicable government auditing standards per GAGAS 6.36. This statement shall be modified in accordance with GAGAS 2.17b if some GAGAS requirements were not followed. Reports for single audits of fiscal years beginning on or after December 26, 2014 shall have references to OMB Circular A-133 replaced with references to Title 2 U.S. Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance 200.110(b), AAG GAS 4.89, Example 4-1).

(2) The AICPA provides examples of the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards in the appendix to chapter 4 of AAG GAS. IPAs conducting audits under this rule shall follow the AICPA report examples.

(a) The state auditor requires the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards be dated the same date as the independent auditor’s report.

(b) No separate management letters shall be issued to the agency by the auditor. Issuance of a separate management letter to an agency shall be considered a violation of the terms of the audit contract and may result in further action by the state auditor. See also Subsection F of 2.2.2.10 NMAC regarding this issue.

(3) The AICPA provides examples of the report on compliance for each major federal program and on internal control over compliance required by the uniform guidance in the appendix to chapter 13 of AAG GAS. IPAs conducting audits under this rule shall follow the AICPA report examples.

(4) The state auditor requires the financial statements, RSI, SI, and other information required by this rule, and the following reports to be included under one report cover: the independent auditor's report; the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards; and the report on compliance for each major federal program and on internal control over compliance required by the uniform guidance. If applicable, the independent auditor's report shall include the AU-C 725 opinion on SI, the schedule of expenditures of federal awards and the HUD FDS (required by HUD guidelines on reporting and attestation requirements of uniform financial reporting standards). The report shall also contain a table of contents and an official roster. The IPA may submit a written request for an exemption from the "one report cover" requirement, but shall receive prior written approval from the state auditor in order to present any of the above information under a separate cover.

U. Disposition of property: Sections 13-6-1 and 13-6-2 NMSA 1978 govern the disposition of tangible personal property owned by state agencies, local public bodies, school districts, and state educational institutions. At least 30 days prior to any disposition of property included on the agency inventory list, written notification of the official finding and proposed disposition duly sworn and subscribed under oath by each member of the authority approving the action shall be sent to the state auditor. The disposition list shall include worn out, unusable or obsolete items, and may include trade-ins, and lost, stolen, or destroyed items, as applicable.

V. Joint powers agreements:

(1) Any joint powers agreement (JPA) shall be listed in a SI schedule in the audit report. The statewide ACFR schedule shall include JPAs that are significant to the state as a whole. The schedule shall include the following information for each JPA: participants; party responsible for operations; description; beginning and ending dates of the JPA; total estimated amount of project and portion applicable to the agency; amount the agency contributed in the current fiscal year; audit responsibility; fiscal agent if applicable; and name of the government agency where revenues and expenditures are reported.

(2) For self-insurance obtained under a JPA, see the GASB Codification Section J50.113.

W. Inventory certification:

(1) All agencies shall comply with the requirements of Section 12-6-10 NMSA 1978 and also maintain a capitalization policy that complies with the law. All agencies shall maintain an inventory listing of chattels and equipment that cost over five thousand dollars (\$5,000).

(2) Agencies shall conduct an annual physical inventory of chattels and equipment on the inventory list at the end of each fiscal year in accordance with the requirements of Section 12-6-10 NMSA 1978. The agency shall certify the correctness of the inventory after the physical inventory. This certification shall be provided to the agency's auditors. The IPA shall audit the inventory listing for correctness and compliance with the requirements of the Audit Act.

X. Tax increment development districts: Pursuant to Subsection C of Section 5-15-9 NMSA 1978, tax increment development districts (TIDDs) are political subdivisions of the state, and they are separate and apart from the municipality or county in which they are located. Section 5-15-10 NMSA 1978 states that the district shall be governed by the governing body that adopted a resolution to form the district or by a five-member board composed of four members appointed by that governing body; provided, however, that the fifth member of the five-member board is the secretary of finance and administration or the secretary's designee with full voting privileges. However, in the case of an appointed board of directors that is not the governing body, at the end of the appointed directors' initial terms, the board shall hold an election of new directors by majority vote of owners and qualified resident electors. Therefore, a TIDD and its audit firm shall apply the criteria of GASBS 14, 39, 61, and 80 to determine whether the TIDD is a component unit of the municipality or county that approved it, or whether the TIDD is a related organization of the municipality or county that approved it. If the TIDD is determined to be a related organization per the GAAP requirements, then the TIDD shall contract separately for an audit separate from the audit of the municipality or county that approved it.

Y. GASBS 68, accounting and financial reporting for pensions:

(1) PERA and ERB shall each prepare schedules of employer allocations as of June 30 of each fiscal year. The state auditor requires the following:

(a) Prior to distribution of the schedule of employer allocations, PERA and ERB shall obtain audits of their respective schedules. These audits shall be conducted in accordance with government auditing standards and AU-C 805, special considerations - audits of single financial statements and specific elements, accounts, or items of a financial statement.

(b) Pursuant to AU-C 805.16, the PERA and ERB auditors shall each issue a separate auditor's report and express a separate opinion on the AU-C 805 audit performed (distinct from the agency's regular financial statement and compliance audit). Additionally, the auditor shall apply the procedures

required by AU-C 725 to all supplementary information schedules included in the schedule of employer allocations report in order to determine whether the supplementary information is fairly stated, in all material respects, in relation to the financial statements as a whole. The IPA shall include the supplementary information schedules in the related reporting in the other-matter paragraph pursuant to AU-C 725.09, regarding whether such information is fairly stated in all material respects in relation to the schedule of employer allocations as a whole.

(c) PERA and ERB shall include note disclosures in their respective schedule of employer allocations reports that detail each component of allocable pension expense at the fund level, excluding employer-specific pension expense for changes in proportion. Each plan shall also include note disclosures by fund detailing collective fund-level deferred outflows of resources and deferred inflows of resources. The disclosures shall include a summary of changes in the collective deferred and inflows outflows of resources (excluding employer specific amounts), by year of deferral.

(d) The AU-C 805 audits and resulting separate reports on the PERA and ERB schedules of employer allocations shall be submitted to the OSA for review and release pursuant to Subsection A of 2.2.2.13 NMAC, prior to distribution to the participant employers.

(e) As soon as the AU-C 805 reports become public record, PERA and ERB shall make the information available to their participant employers.

(f) PERA and ERB shall each prepare an employer guide that illustrates the correct use of their respective schedule of employer allocations report by their participant employers. The guides shall explicitly distinguish between the plan-level reporting and any employer-specific items. The calculations and record-keeping necessary at the employer level (for adjusting journal entries, amortization of deferred amounts, etc.) shall be described and illustrated. The employer guides shall be made available to the participant employers by June 30 of the subsequent fiscal. Stand-alone state agency financial statements that exclude the proportionate share of the collective net pension liability of the state of New Mexico shall include note disclosure referring the reader to the statewide ACFR for the state's net pension liability and other pension-related information.

(2) Stand-alone state agency financial statements that exclude the proportionate share of the collective net pension liability of the state of New Mexico shall include note disclosure referring the reader to the statewide ACFR for the state's net pension liability and other pension-related information.

Z. GASBS 77, tax abatement agreements: Unaudited, but final, GASBS 77 disclosure information shall be provided to any agency whose tax revenues are affected by the reporting agency's tax abatement agreements no later than September 15 of the subsequent fiscal year. This due date does not apply if the reporting agency does not have any tax abatement agreements that reduce the tax revenues of another agency. All tax abatement agreements entered into by an agency's component unit(s) shall be disclosed in the same manner as the tax abatement agreements of the primary government. If an agency determines that any required disclosure is confidential, the agency shall cite the legal authority for the determination.

AA. GASBS 75, accounting and financial reporting for postemployment benefits other than pensions: The retiree health care authority (RHCA) shall prepare a schedule of employer allocations as of June 30 of each fiscal year. The state auditor requires the following:

(1) Prior to distribution of the schedule of employer allocations, RHCA shall obtain an audit of the schedule. This audit shall be conducted in accordance with government auditing standards and AU-C 805, special considerations - audits of single financial statements and specific elements, accounts, or items of a financial statement.

(2) Pursuant to AU-C 805.16, the RHCA auditors shall issue a separate auditor's report and express a separate opinion on the AU-C 805 audit performed (distinct from the agency's regular financial statement and compliance audit). Additionally, the auditor shall apply the procedures required by AU-C 725 to all supplementary information schedules included in the schedule of employer allocations report in order to determine whether the supplementary information is fairly stated, in all material respects, in relation to the financial statements as a whole. The IPA shall include the supplementary information schedules in the related reporting in the other-matter paragraph pursuant to AU-C 725.09, regarding whether such information is fairly stated in all material respects in relation to the schedule of employer allocations as a whole.

(3) RHCA shall include note disclosures in the schedule of employer allocations report that detail each component of allocable OPEB expense at the fund level, excluding employer-specific OPEB expense for changes in proportion. RHCA shall also include note disclosures by fund detailing collective fund-level deferred outflows of resources and deferred inflows of resources. The disclosures shall include a summary of changes in the collective deferred outflows and inflows of resources (excluding employer specific amounts), by year of deferral.

(4) The AU-C 805 audit and resulting separate report on the RHCA schedule of employer allocations shall be submitted to the OSA for review and release pursuant to Subsection A of 2.2.2.13 NMAC, prior to distribution to the participant employers.

(5) As soon as the AU-C 805 reports become public record, RHCA shall make the information available to its participant employers.

(6) RHCA shall prepare an employer guide that illustrates the correct use of the schedule of employer allocations report by its participant employers. The guide shall explicitly distinguish between the plan-level reporting and any employer-specific items. The calculations and record-keeping necessary at the employer level (for adjusting journal entries, amortization of deferred amounts, etc.) shall be described and illustrated. The employer guide shall be made available to the participant employers by June 30 of the subsequent fiscal year.

(7) Stand-alone state agency financial statements that exclude the proportionate share of the collective OPEB liability of the state of New Mexico, shall include note disclosure referring the reader to the statewide ACFR for the state's net OPEB liability and other OPEB-related information.

[2.2.2.10 NMAC - Rp, 2.2.2.10 NMAC, 3/28/2023; A, xx/xx/2024]

2.2.2.14 CONTINUING PROFESSIONAL EDUCATION AND PEER REVIEW REQUIREMENTS:

A. Continuing professional education: IPAs performing annual financial and compliance audits, or other attest engagements under GAGAS shall ensure that all members of their staff comply with the CPE requirements of the most recent revision of GAGAS.

B. Peer review requirements: IPAs performing annual financial and compliance audits, or other attest engagements under GAGAS shall comply with the requirements of the most recent revision of GAGAS relating to quality control and assurance and external peer review.

(1) ~~[Per AICPA PRP Section 1000 standards for performing and reporting on peer reviews,~~ **a) An audit** firm's due date for its initial peer review is 18 months from the date the firm enrolled in the peer review program or should have enrolled, whichever is earlier. A firm's subsequent peer review is due three years and six months from the previous peer review year end.

(2) The IPA firm profile submission to the state auditor shall include copies of the following peer review documentation:

(a) the peer review report for the auditor's firm;
(b) if applicable, detailed descriptions of the findings, conclusions and recommendations related to deficiencies or significant deficiencies required by GAGAS 5.91;
(c) if applicable, the auditor's response to deficiencies or significant deficiencies;
(d) the letter of acceptance from the peer review program in which the firm is enrolled; and

(e) a list of the governmental audits reviewed during the peer review.

(3) A peer review rating of "failed" on the auditor's peer review shall disqualify the IPA from performing New Mexico governmental audits.

(4) During the procurement process IPAs shall provide a copy of their most recent external peer review report to the agency with their bid proposal or offer. Any subsequent peer review reports received during the period of the contract shall also be provided to the agency.

(5) The peer review shall meet the requirements of GAGAS 5.60 to 5.95.

(6) The peer reviewer shall be familiar with this rule. This is a requirement of the state auditor that can be achieved by attendance at audit rule training provided by the OSA.

C. State auditor quality control reviews: The state auditor performs its own quality control review of IPA audit reports and working papers. An IPA that is included on the state auditor's list of approved firms for the first time may be subject to an OSA quality control review of the IPA's working papers. This review shall be conducted as soon as the documentation completion date, as defined by AU-C Section 230, has passed (60 days after the report release date). When the result of the state auditor's quality control review differs significantly from the external quality control report and corresponding peer review rating, the state auditor may no longer accept external peer review reports performed by that reviewer. In making this determination, the state auditor shall take into consideration the fact that AICPA peer reviews are performed on a risk-based or key-element approach looking for systemic problems, while the state auditor reviews are engagement-specific reviews.

D. SOC Audit qualifications: The OSA requires any firm or IPA contracting with an agency or LPB to conduct a SOC 1 or SOC 2 Audit engagement to have the following proof of qualifications: Firms must have a SOC engagement peer review rating of pass to qualify for a SOC engagement.

[2.2.2.14 NMAC - Rp, 2.2.2.14 NMAC, 3/22/2022; A, xx/xx/2024]

2.2.2.15 SPECIAL AUDITS AND EXAMINATIONS:

A. Fraud, waste or abuse in government reported by agencies, IPAs or members of the public:

(1) Reports of fraud, waste & abuse: Pursuant to the authority set forth in Subsection C of Section 12-6-3 NMSA 1978, the ~~[state auditor]~~ OSA may ~~[conduct initial]~~ initiate ~~[fact-finding]~~ special investigation or examination procedures in connection with reports of financial fraud, waste and abuse in government. ~~[made by agencies, IPAs or members of the public. Reports may be made telephonically or in writing through the fraud hotline or website established by the state auditor for the confidential reporting of financial fraud, waste, and abuse in government. Reports may be made telephonically to the fraud hotline by calling 1-866-OSA-FRAUD (1-866-672-3728) or reported in writing through the state auditor's website at www.saonm.org.]~~ Reports received or created by the ~~[state auditor]~~ OSA are confidential audit information and audit documentation in connection with the state auditor's statutory duty to examine and audit the financial affairs of every agency, or in connection with the state auditor's statutory discretion to audit the financial affairs and transactions of an agency in whole or in part.

(2) Confidentiality of sources: The identity of a person making a report to the OSA ~~[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 and may not be disclosed, except as required by Section 12-6-6 NMSA 1978.

(3) Confidentiality of files: A report alleging financial fraud, waste, or abuse in government that is made to the OSA ~~[directly to the state auditor orally or in writing, or telephonically or in writing] through the state auditor's fraud hotline or website,~~ and any resulting special audit, performance audit, attestation engagement or forensic accounting or other non-attest engagement ~~[, and all records and files related thereto]~~ files are confidential audit documentation and 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, performance audit, attestation engagement, forensic accounting engagement, non-attest engagement, or other existing or potential engagement regarding the financial affairs or transactions of an agency. ~~[Any information related to a report alleging financial fraud, waste, or abuse in government provided to an independent auditor, performance audit team or forensic accounting team, is considered to be confidential audit or engagement documentation and is subject to confidentiality requirements, including but not limited to requirements under Subsections E and M of 2.2.2.10 NMAC, the Public Accountancy Act, and the AICPA Code of Professional Conduct.]~~

(a) Any records that result in, or are part of, any subsequent or resulting special audit, performance audit, attestation engagement or forensic accounting or other non-attest engagement will be audit workpapers and therefore confidential. Records that result from, or are part of OSA, special investigations that do not result in a subsequent special audit, performance audit, attestation engagement or forensic accounting or other non-attest engagement may be disclosed, with personal identifier information redacted, once the examination or investigation is closed.

(b) Any information related to a report alleging financial fraud, waste, or abuse in government provided to an independent auditor, performance audit team or forensic accounting team, is considered to be confidential audit or engagement documentation and is subject to confidentiality requirements, including but not limited to requirements under Subsections E and M of 2.2.2.10 NMAC, the Public Accountancy Act, and the AICPA Code of Professional Conduct.

(4) ~~[The]~~ If the OSA ~~[may make]~~ makes inquiries of agencies as part of the ~~[fact-finding]~~ investigation process performed by the OSA's special investigations division ~~[–Agencies]~~, agencies shall respond to the OSA inquiries within 15 calendar days of receipt or as soon as practicable under the circumstances with written notice to the OSA stating the basis for any delay. IPAs shall test compliance with this requirement and report noncompliance as a finding in the annual financial and compliance audit report.

B. Special audit or examination process:

(1) Designation: Pursuant to Section 12-6-3 NMSA 1978, in addition to the annual audit, the state auditor may cause the financial affairs and transactions of an agency to be audited in whole or in part. Accordingly, the state auditor may designate an agency for special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement regarding the financial affairs and transactions of an agency or local public body based on information or a report received from an agency, IPA or member of the public. For purposes of this rule "special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement" includes, without limitation, AUP, consulting, and contract close-out (results-based award) engagements that address financial fraud, waste, or abuse in government. It also includes non-attest

engagements performed under the forensic services standards issued by the AICPA and engagements performed following the Code of Professional Standards issued by the Association of Certified Fraud Examiners (ACFE). The state auditor shall inform the agency of the designation by sending the agency a notification letter. The state auditor may specify the subject matter, the scope and any procedures required, the AICPA or other professional standards that apply, and for a performance audit, performance aspects to be included and the potential findings and reporting elements that the auditors expect to develop. Pursuant to Section 200.503 of Uniform Guidance, if a single audit was previously performed, the special audit, attestation engagement, performance audit or forensic accounting engagement shall be planned and performed in such a way as to build upon work performed, including the audit documentation, sampling, and testing already performed by other auditors. The attestation and performance audit engagements may be conducted pursuant to government auditing standards if so specified by the OSA.

(2) Costs: All reasonable costs of special audits, attestation engagements, forensic accounting engagements, non-attest engagements, or single-entity performance audits conducted pursuant to this Section shall be borne by the agency audited pursuant to Section 12-6-4 NMSA 1978. The state auditor, in its sole discretion, may apportion among the Agencies audited some or all of the reasonable costs of a multi-entity performance audit.

(3) Who performs the engagement: The state auditor may perform the special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement alone or with other professionals selected by the state auditor. Alternatively, the state auditor may require the engagement to be performed by an IPA or a team that may be comprised of any of the following: independent public accountants; individuals with masters degrees or doctorates in a relevant field such as business, public administration, public policy, finance, or economics; individuals with their juris doctorate; CFE-certified fraud examiners; CFF-certified forensic auditors; CIA-certified internal auditors; or other specialists. If the state auditor designates an agency for an engagement to be conducted by an IPA or professional team, the agency shall:

(a) upon receipt of notification to proceed from the state auditor, identify all elements or services to be solicited, obtain the state auditor's written approval of the proposed scope of work, and request quotations or proposals for each applicable element of the engagement;

(b) follow all applicable procurement requirements which may include, but are not limited to, Uniform Guidance, Procurement Code (Sections 13-1-28 through 13-1-199 NMSA 1978), or equivalent home rule procurement provisions when selecting an IPA or team to perform the engagement;

(c) submit the following information to the state auditor by the due date specified by the state auditor:

(i) a completed template for special audits, attestation engagements, performance audits or forensic accounting engagements, provided at www.osanm.org, which the agency shall print on agency letterhead; and

(ii) a completed contract form including the contract fee, start and completion date, and the specific scope of services to be performed in the format prescribed by the OSA, provided at www.osanm.org, with all required signatures on the contract.

(d) If the agency fails to select an IPA and submit the signed contract to OSA by the due date specified by the state auditor, or, if none within 60 days of notification of designation from the state auditor, the state auditor may conduct the engagement or select the IPA for that agency in accordance with the process described at Subsection F of 2.2.2.8 NMAC.

(4) Errors: Contracts that are submitted to the OSA with errors or omissions shall be rejected by the state auditor. The state auditor shall return the rejected contract to the agency indicating the reason(s) for the rejection.

(5) Recommendation rejections: In the event the agency's recommendation is not approved by the state auditor, the state auditor shall promptly communicate the decision, including the reason(s) for rejection, to the agency, at which time the agency shall promptly submit a different recommendation. This process shall continue until the state auditor approves a recommendation and related contract. During this process, whenever a recommendation and related contract are not approved, the agency may submit a written request to the state auditor for reconsideration of the disapproval. The agency shall submit its request no later than 15 calendar days from the date of the disapproval and shall include documentation in support of its recommendation. If warranted, after review of the request, the state auditor may hold an informal meeting to discuss the request. The state auditor shall set the meeting in a timely manner with consideration given to the agency's circumstances.

(6) Contract amendments: Any proposed contract amendments shall be processed in accordance with Subsection N of 2.2.2.8 NMAC.

(7) Access to records and documents: For any special audit, attestation engagement, performance audit or forensic accounting engagement, or non-attest engagement, the state auditor and any engaged professionals shall have available to them all documents necessary to conduct the special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement. Furthermore, pursuant to Section 12-6-11 NMSA 1978, when necessary for a special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement the state auditor may apply to the district court of Santa Fe County for issuance of a subpoena to compel the attendance of witnesses and the production of books and records.

(8) Entrance, progress and exit conferences: The IPA or other professional shall hold an entrance conference and an exit conference with the agency, unless the IPA or other professional has submitted a written request to the state auditor for an exemption from this requirement and has obtained written approval of the exemption. The OSA has the authority to notify the agency or IPA or other professional that the state auditor shall be informed of the date of the entrance conference, any progress meetings and the exit conference. If such notification is received, the IPA or other professional and the agency shall invite the state auditor or the auditor's designee to attend all such conferences no later than 72 hours before the proposed conference or meeting. The state auditor may also require the IPA or other professional to submit its audit plan to the state auditor for review and approval. The date of the exit conference(s) and the names and titles of personnel attending shall be stated on the last page of the special audit report.

(9) Required reporting: All reports for special audits, attestation engagements, performance audits, forensic accounting engagements, or non-attest engagements related to financial fraud, waste or abuse in government undertaken pursuant to 2.2.2.15 NMAC (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) shall report as findings any fraud, illegal acts, non-compliance or internal control deficiencies, pursuant to Section 12-6-5 NMSA 1978. Each finding shall comply with the requirements of Subsection L of 2.2.2.10 NMAC for audit and attest engagements or Subsection D of 2.2.2.15 NMAC for non-attest engagements.

(10) Report review: As required by Section 12-6-14 NMSA 1978, the state auditor shall review reports of any special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement made pursuant to this section for compliance with the professional services contract and this rule. Upon completion of the report, the IPA or other professional shall deliver the electronic report to the state auditor with a copy of any signed management representation letter, if applicable. Unfinished or excessively deficient reports shall be rejected by the state auditor. If the report is rejected the firm shall submit an electronic version of the corrected rejected report for state auditor review. The name of the electronic file shall be "corrected rejected report" followed by the agency name and fiscal year. The IPA or other professional shall respond to all review comments as directed by the state auditor.

(11) Report release: After OSA's review of the report for compliance with the professional services contract and this rule, the state auditor shall authorize the IPA to print and submit the final report. An electronic version of the report, in the PDF format described at Subsection B of 2.2.2.9 NMAC, shall be delivered to the state auditor within five business days. The state auditor shall not release the report until all the required documents are received by the state auditor. The state auditor shall provide the agency with a letter authorizing the release of the report pursuant to Section 12-6-5 NMSA 1978. Agency and local public body personnel shall not release information to the public relating to the special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement until the report is released and has become a public record pursuant to Section 12-6-5 NMSA 1978. Except for the exception under Subsection B of 2.2.2.15 NMAC, at all times during the engagement and after the engagement report becomes a public record, the IPA or other professional(s) shall not disclose to the public confidential information about the auditee or about the engagement. 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.

(12) Disclosure by professionals: The IPA or other professional shall not disclose information identified as confidential information provided to them by the state auditor unless otherwise specified by the state auditor. Disclosure of confidential information by the IPA or other professional may result in legal action by the state auditor, or in the case of an IPA, restriction pursuant to Subsection D of 2.2.2.8 NMAC.

(13) Payment: Progress payments up to (but not including) ninety-five percent of the contract amount do not require state auditor approval and may be made by the agency if the agency monitors the progress of the services procured. If requested by the state auditor, the agency shall provide a copy of the approved progress billing(s). Final payments over ninety-five percent may be made by the agency pursuant to either of the following:

(a) stated in the letter accompanying the release of the report to the agency, or
(b) in the case of ongoing law enforcement investigations, stated in a letter prior to the release of the report to the agency.

C. Agency-initiated special audits or examinations:

(1) Applicability: With the exception of agencies that are authorized by statute to conduct performance audits and forensic accounting engagements, this section applies to all special audits and examinations in which an agency enters into a professional services contract for a special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement relating to financial fraud, waste or abuse, but the agency has not been designated by the state auditor for the engagement pursuant to ~~[Subsection B of 2.2.2.15 NMAC]~~ this rule. For purposes of this rule, “special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement” includes, without limitation, AUP, consulting, forensic services and contract close-out (results-based award) engagements that address financial fraud, waste or abuse in government.

(2) ~~[Contracting: An agency, IPA or other professional shall not enter into a professional services contract for a special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement regarding the financial affairs and transactions of an agency and relating to financial fraud, waste or abuse in government without the prior written approval of the state auditor. The proposed professional services contract shall be submitted to the state auditor for review and approval after it has been signed by the agency and the IPA or other professional, unless the agency or IPA or other professional applies to the state auditor for an exemption and the state auditor grants the exemption. When contracting with an IPA or other professional, the agency shall contract only with an IPA or other professional that has been approved by the state auditor to conduct such work. The state auditor may, in its sole discretion, require a non-IPA professional to submit proof of qualifications, a firm profile or equivalent documentation prior to approving the contract. The contract shall include the contract fee, start and completion date, and the specific scope of services to be performed, and shall follow any template that the state auditor may provide. See Subsection F of 2.2.2.10 NMAC for applicable restrictions on the engagement letter.]~~ Any agency, local public body, IPA or other professional that enters into a professional services contract for a special audit or examination of the financial affairs and transactions of an agency or local public body that was not designated by the state auditor for the engagement must notify the OSA and provide a copy of any resulting report or any resulting findings of violations of law or good accounting practices to the OSA. Findings shall be reported as described in Subsection D of 2.2.2.15 NMAC. All findings relating to any violation of a criminal statute in connection with financial affairs must be reported immediately to the OSA pursuant to Section 12-6-6, NMSA 1978.

~~[(3) Applicability of other rules: The provisions outlined in Subsection B of 2.2.2.15 NMAC apply to agency-initiated special audits, attestation engagements, performance audits and forensic accounting engagements.]~~

D. Finding requirements for special audits or examinations: Communicating findings: All finding reference numbers shall follow a consistent format. Findings required by Section 12-6-5 NMSA 1978 shall be presented in a separate schedule of findings and placed at the end of the report.

(a) Section 12-6-5 NMSA 1978 requires that for every special audit and examination made “each report set out in detail, in a separate section, any violation of law or good accounting practices found by the audit or examination.”

(b) Each finding shall specifically state and describe the following:

- (i) condition (provides a description of a situation that exists and includes the extent of the condition and an accurate perspective, the number of instances found, the dollar amounts involved, if specific amounts were identified);
- (ii) criteria (identifies the required or desired state or what is expected from the program or operation; cites the specific section of law, regulation, ordinance, contract, or grant agreement if applicable);
- (iii) effect (the logical link to establish the impact or potential impact of the difference between the situation that exists (condition) and the required or desired state (criteria); demonstrates the need for corrective action in response to identified problems or relevant risks);
- (iv) cause (identifies the reason or explanation for the condition or the factors responsible for the difference between what the auditors found and what is required or expected; the cause serves as a basis for the recommendation);
- (v) recommendation addressing each condition and cause; and

(vi) agency response (the agency's response shall include specific planned corrective actions with a timeline and designation of what employee position(s) are responsible for meeting the deadlines in the timeline).
[2.2.2.15 NMAC - Rp, 2.2.2.15 NMAC, 3/28/2023; A, xx/xx/2024]