

# OSA Audit Advisory



## New Mexico Opioid Settlement Funds

### **Audit Advisory Statement:**

The Office of the State Auditor (OSA) issues this Audit Advisory to alert the local governments of the state of New Mexico that have received or will be receiving funds from New Mexico's Opioid Settlement, as well as the state's independent public accountants (IPAs), of the necessity for strict oversight and accountability for opioid-settlement funds. According to the New Mexico Opioid Allocation Agreement (NMOAA) that outlined requirements of the state's settlement agreement with opioid manufacturers and distributors, funds disbursed from the Local Government (LG) Share of the settlement fund may only be expended for opioid-related expenditures, and any misappropriations of funds will result in the LG being blocked from receiving further funds from the LG Share until the State Auditor confirms that those monies have been replaced.

The Audit Rule at 2.2.2.10(J) NMAC requires IPAs to test for compliance with state law and other rules and regulations applicable to the agency under audit. The OSA is requiring all IPAs to determine if the agency under audit is subject to the terms of the NMOAA and if so to perform tests of compliance with the NMOAA. The permissible expenditures are expenditures consistent with the categories enumerated in Exhibit E to the Distributor Master Settlement Agreement found at <https://nationalopioidsettlement.com/> and attached hereto.

Agencies shall include information about the settlement funds in the fund description or a separate note in the financial statements.

Any identified non-compliance shall be presented as an audit finding in accordance with Audit Rule requirements at 2.2.2.10(L).

### **Terms of the New Mexico Opioid Allocation Agreement (NMOAA):**

#### **NMOAA Section C, Compliance Reporting and Accountability:**

1. Every Participating Local Government shall create a separate fund or project on its financial books and records that is designated for the receipt and expenditure of each entity's portion of the LG Share, called the "LG Abatement Fund." Funds in an LG Abatement Fund shall not be commingled with any other money or funds of the Local Government. A Local Government may invest LG Abatement Fund funds consistent with the investment of other funds of a Local Government.
2. Funds in a LG Abatement Fund may be expended by a Local Government only for Opioid Related Expenditures. For avoidance of doubt, funds in a LG Abatement Fund may not be expended for costs, disbursements, or payments made or incurred prior to the Settlement.
3. **As part of the State or a Participating Local Government's annual audit pursuant to the State Audit Act, NMSA 1978, Chapter 12, Article 6, both the State fund and each LG Abatement Fund shall be audited to provide reasonable assurances that the LG Abatement Fund disbursements**

## **Terms of the NMOAA Continued:**

**consistent with the terms of this NMOAA.** If any such audit reveals an expenditure inconsistent with the terms of this NMOAA, the State or the Local Government shall immediately redirect an amount equal to the funds associated with the inconsistent expenditure from another revenue source that may permissibly be expended for such purposes to an Opioid Related Expenditure. **Either the State or the Participating Local Government who has been found to have expended funds inconsistently with this NMOAA will be ineligible to receive further distributions of the LG Share unless and until such a redirection is accomplished and confirmed by the State Auditor.** The Settlement Administrator shall be instructed to hold either the State or that Local Government's future portion of the LG Share in escrow until instructed to release those funds by the State Auditor. (emphasis added)

## **OSA Recommendation:**

The OSA recommends government entities of all sizes review their policies and procedures to ensure adequate & appropriate levels of control over opioid-settlement funds.

## **Audit Findings:**

There will be an audit finding for all financial reviews not in compliance with the terms of this agreement.