

PROPOSED RULEMAKING AND PUBLIC HEARING

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Deposition of: Transcript

Taken on: April 29, 2025

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531 Harkle Road, Suite A  
Santa Fe, NM 87505

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PROPOSED RULEMAKING AND PUBLIC HEARING

April 29th, 2025

9:02a.m.

CNM WORKFORCE TRAINING CENTER  
5600 Eagle Rock Avenue, Northeast  
Albuquerque, New Mexico 87113

**CERTIFIED  
TRANSCRIPT**

HEARING OFFICER: MS. SUSANNE ROUBIDOUX  
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OFFICE OF THE STATE AUDITOR  
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REPORTED BY: MICHELE M. TRUJILLO  
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CUMBRE COURT REPORTING SERVICES, LLC  
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1 DEPUTY STATE AUDITOR BEJARANO: Good  
2 morning, everyone. Thank you for coming. This is an  
3 Audit Rule Change Hearing for the Office of the State  
4 Auditor, State of New Mexico.

5 With us today, I'll introduce some of our  
6 staff. We have our intern, Adam Montoya, here, and  
7 just for -- people in our office can't comment or ask  
8 questions. So you're just here to look pretty. Then  
9 we have our legal assistant, Jennifer Koski. And  
10 I'll introduce our presiding Hearing Officer. She is  
11 Susanne Roubidoux, who is also our General Counsel.

12 HEARING OFFICER ROUBIDOUX: Thank you.

13 DEPUTY STATE AUDITOR BEJARANO: Oh, and I'm  
14 Ricky Bejarano. You might have known that already.

15 HEARING OFFICER ROUBIDOUX: All righty.  
16 Good morning, everyone. My name is Susanne -- can  
17 you hear me okay?

18 Okay. My name is Susanne Roubidoux, and  
19 I'm the Chief General Counsel of the Office of the  
20 State Auditor, and I've been designated as the  
21 presiding Hearing Officer for today's Public Rule  
22 Hearing on proposed amendments to the Audit Rule 2.2.2  
23 New Mexico Administrative Code, or NMAC,  
24 Sections 2, 6 through 10, 12, and 14 through 16.

25 Today is April 29th, 2025. The time

1 is 9:02 a.m. This Rule Hearing is being held in  
2 person at the CNM Workforce Training Center, 5600  
3 Eagle Rock Avenue, Northeast, Albuquerque,  
4 New Mexico.

5 The purpose of today's Rule Hearing is for  
6 the Office of the Auditor, or O-S-A, or OSA, to  
7 receive comments from the public on proposed  
8 amendments to the Audit Rule 2.2.2 NMAC,  
9 Sections 2, 6 through 10, 12, and 14 through 16.

10 The Office of State Auditor welcomes  
11 everyone at this hearing. Members of the public may  
12 comment on the proposed amendments to the Audit Rule  
13 at today's hearing, but please be aware that this is  
14 not an open forum to present comments on topics other  
15 than the proposed amendments.

16 As the presiding Hearing Officer, I have  
17 the authority to strike or disallow comments which  
18 are off topic or do not pertain to the proposed  
19 amendments to the Audit Rule, Sections 2, 6  
20 through 10, 12, and 14 through 16.

21 If you are a member of the public and are  
22 here for today's Rule Hearing, please sign in on the  
23 sign-in sheet located at the front of the room.  
24 Attending today from the Office of the Auditor is the  
25 Deputy State Auditor, Ricky Bejarano, and our



1     paralegal, Jennifer Koski. And then we have one of  
2     our interns, Adam, who is here as well.

3             Again, today's Public Rule Hearing is a  
4     formal proceeding governed by the State Rules Act and  
5     the default procedural rule for rulemaking issued by  
6     the New Mexico Office of the Attorney General, which  
7     is now known as the New Mexico Department of Justice,  
8     and the default procedural rules are set forth  
9     at 1.24.25 NMAC.

10            A court reporter, Ms. Trujillo, is present  
11     for today's Public Rule Hearing. The court reporter  
12     will transcribe the hearing and collect any exhibits  
13     entered into the record at the hearing. The  
14     transcripts and exhibits will become part of the  
15     Public Rule Hearing record.

16            This Public Rule Hearing will be conducted  
17     in the following manner. First, I will present  
18     documents that are already considered part of the  
19     public rulemaking record, per the Attorney General's  
20     default procedural rules for rulemaking. These  
21     documents will be marked as exhibits and will be  
22     formally entered into the record of today's public  
23     hearing.

24            After those documents have been entered  
25     into the record, I will then give members of the

1 public the opportunity to present any comments they  
2 may have, either oral or written, on the proposed  
3 rule amendments. If any member of the public wishes  
4 to speak, I ask that you first state your name and if  
5 you have any relevant affiliation to a group or  
6 organization.

7 Please remember to speak loudly and clearly  
8 so that the court reporter and representatives of the  
9 OSA can hear your comments. I will not follow the  
10 Rules of Evidence in today's hearing, but I may, in  
11 the interest of efficiency, exclude or limit comment  
12 or questions that I deem to be irrelevant, redundant,  
13 or unduly repetitious. This hearing is open to the  
14 public, but it is not subject to the New Mexico Open  
15 Meetings Act.

16 After a member of the public has stated  
17 their comments, representatives of the OSA may ask  
18 questions of that person. Anyone in attendance may  
19 also ask questions of that person, after being  
20 recognized by me and after identifying themselves for  
21 the record.

22 I will also ask if any member of the public  
23 has any written comments on the proposed amendments.  
24 Anyone who would like to present a written comment on  
25 the proposed amendments will be asked to state their

1 name and any relevant affiliation with a group or  
2 organization. Each written comment on the proposed  
3 amendments will be read into the record or  
4 summarized, depending on its length, and marked as an  
5 exhibit and formally entered into the record.

6 Are there any questions from members of the  
7 public regarding how today's Rule Hearing will be  
8 conducted?

9 No? Okay.

10 Has everyone signed the sign-in sheet?

11 Okay. If there are no further questions,  
12 then let's continue. The time is now 9:06 a.m. The  
13 first action I will take today is to present all  
14 documents that were pre-filed prior to today's  
15 Rule Hearing. I will describe each document and then  
16 give it to the court reporter, who will mark it for  
17 identification.

18 The documents are: Exhibit 1 is our Notice  
19 of Proposed Rulemaking and Public Hearing published  
20 in the New Mexico Register, Volume XXXVI, Issue 6, on  
21 March 25, 2025.

22 (Exhibit 1 marked.)

23 HEARING OFFICER ROUBIDOUX: Exhibit 2 is a  
24 copy of the proposed amendments to 2.2.2 NMAC Audit  
25 Rule in underline and strike-through format.

(Exhibit 2 marked.)

HEARING OFFICER ROUBIDOUX: Exhibit 3 is a screenshot of the OSA website for the 2025 Audit Rule rulemaking.

(Exhibit 3 marked.)

HEARING OFFICER ROUBIDOUX: Exhibit 4 is a printout of five pages from the sunshinenm.com Rule Hearing search page for the 2025 Audit Rule rulemaking. This is otherwise known as the New Mexico Sunshine Portal.

(Exhibit 4 marked.)

HEARING OFFICER ROUBIDOUX: Exhibit 5 is an email dated March 25, 2025, from the Office of the Auditor to the Legislative Council Service regarding the Office of State Auditor rulemaking.

(Exhibit 5 marked.)

HEARING OFFICER ROUBIDOUX: Exhibit 6 is written comments received by the Office of State Auditor during a pre-file period of March 25, 2025, through 5:00 p.m., April 28th, 2025. The first one is Exhibit 6.1, which is a four-page letter from the New Mexico Department of Finance and Administration, dated April 25, 2025.

(Exhibit 6.1 marked.)

HEARING OFFICER ROUBIDOUX: Exhibit 6.2 is

1 a five-page letter from Robert Blumenfeld, of Mendel  
2 Blumenfeld & Pulido, PLLC, dated April 28th, 2025.

3 (Exhibit 6.2 marked.)

4 HEARING OFFICER ROUBIDOUX: And Exhibit 7  
5 is the sign-in sheet from today's hearing.

6 (Exhibit 7 marked.)

7 HEARING OFFICER ROUBIDOUX: I move  
8 Exhibits 1 through 7 be admitted and entered into the  
9 record. Are there any objections?

10 Okay. Hearing none, Exhibits 1 through 7  
11 are admitted and entered into the record.

12 (Exhibits 1 through 7 admitted.)

13 HEARING OFFICER ROUBIDOUX: Okay. Now that  
14 those preliminary matters are taken care of, I will  
15 now open the Rule Hearing to receive any oral or  
16 written comments on the proposed amendments from  
17 members of the public who are here today for the  
18 Rule Hearing.

19 Just as a reminder, this is not an open  
20 forum to present general comments or questions  
21 regarding the Audit Rule or to propose future changes  
22 that you would like to see. Only oral or written  
23 comments that pertain to the proposed amendments will  
24 be allowed.

25 Are there any members of the public here

1 today who would like to comment on the proposed  
2 amendments to Section 2 of the Audit Rule?

3 No?

4 MS. BRIDGE: Can I just ask a question?

5 HEARING OFFICER ROUBIDOUX: Sure. Can you  
6 state your name?

7 MS. BRIDGE: Yes. Lunda Bridge, Executive  
8 Director of Albuquerque Housing Authority.

9 HEARING OFFICER ROUBIDOUX: Okay.

10 MS. BRIDGE: And just for my understanding,  
11 in regards to -- I think you were referring to the  
12 change in the scope. How does that apply or not  
13 apply if the OSA's office is actually conducting the  
14 audit of the agency?

15 HEARING OFFICER ROUBIDOUX: The change  
16 of -- oh, are you -- so is this a comment about --

17 MS. BRIDGE: You were asking --

18 HEARING OFFICER ROUBIDOUX: -- Section 2,  
19 "Scope"?

20 MS. BRIDGE: Yes. It exempts the OSA from  
21 the Audit Rule, but I guess my question is: What if  
22 OSA is the auditor of an agency?

23 HEARING OFFICER ROUBIDOUX: Well, that's  
24 the proposed -- I mean, our purpose here is not to  
25 respond to your questions --

1 MS. BRIDGE: Okay.

2 HEARING OFFICER ROUBIDOUX: -- or comments.  
3 It's just for you to make a comment or have a  
4 question.

5 MS. BRIDGE: Oh, sorry. I just don't  
6 understand. Yeah, but --

7 HEARING OFFICER ROUBIDOUX: Okay.

8 MS. BRIDGE: I'm sorry. I don't understand  
9 the change.

10 HEARING OFFICER ROUBIDOUX: You don't  
11 understand. Well, it's --

12 MS. BRIDGE: But I understand if you're not  
13 here to respond.

14 HEARING OFFICER ROUBIDOUX: Yeah, we're not  
15 here to -- I'm to accept written or oral comments.  
16 I'm not here to explain. So --

17 MS. BRIDGE: Okay.

18 HEARING OFFICER ROUBIDOUX: Okay. Are  
19 there any written comments on the proposed amendments  
20 to Section 2, "Scope"?

21 Okay. Well, then let's move on. Are there  
22 any oral comments on the proposed amendments to  
23 Section 6 of the Audit Rule, "Objective"?

24 Any written comments on proposed amendments  
25 to Section 6, "Objective"?

1           Are there any oral comments on the proposed  
2 amendments to Section 7, "Definitions"?

3           Any written comments on proposed amendments  
4 to Section 7, "Definitions"?

5           Are there any oral comments on the proposed  
6 amendments to Section 8, the procurement and audit  
7 process?

8           Are there any written comments on the  
9 proposed amendments to Section 8?

10          Okay. Are there any oral comments on the  
11 proposed amendments to Section 9 of the Audit Rule,  
12 "Report Due Dates"?

13          Are there any written comments on proposed  
14 amendments to Section 9 of the Audit Rule?

15          No?

16          The OSA did receive a written comment.  
17 It's been marked as Exhibit 6.1, which is the  
18 April 25, 2025, letter from the New Mexico Department  
19 of Finance and Administration, the DFA. It proposes  
20 changing the report due dates under Section 9.A.1.C  
21 of the Audit Rule.

22          As the presiding Hearing Officer for this  
23 Rule Hearing, I reviewed the proposed amendments that  
24 were published by the Office of the State Auditor,  
25 and I did not find any proposed amendments to the



1 report due dates under Section 9.A.1.C of the  
2 Audit Rule. Therefore, DFA's proposal to change the  
3 report due dates under Section 9.A.1.C is not  
4 germane, and it's outside of the scope of this  
5 rulemaking proceeding.

6 In that same exhibit, Exhibit 6.1, the DFA  
7 letter, they also proposed changing the notice  
8 requirements under Section 9.A.5 of the Audit Rule.  
9 I did not find any proposed amendments that were  
10 published by the Office of the Auditor to  
11 Section 9.A.5 of the Audit Rule. Therefore, DFA's  
12 proposal to change the notice requirements under  
13 Section 9.A.5 is not germane, and it's outside the  
14 scope of this rulemaking proceeding.

15 So now we moving on to Section 10. Are  
16 there any oral comments on the proposed amendments to  
17 Section 10 of the Audit Rule?

18 MS. BELTRAN-SCHMITZ: Yes.

19 HEARING OFFICER ROUBIDOUX: Okay. Yes.

20 So would you state your name clearly for  
21 our court reporter?

22 MR. BELTRAN-SCHMITZ: Laura Beltran-Schmitz,  
23 with CLA.

24 It is Section -- yes. So it's letter K,  
25 Federal Requirements, under this section, item 5.

1 HEARING OFFICER ROUBIDOUX: You're under 10?

2 MS. BELTRAN-SCHMITZ: Correct, 10.K.5,  
3 Federal Requirements.

4 HEARING OFFICER ROUBIDOUX: Okay. Yes.

5 MS. BELTRAN-SCHMITZ: So, just in listening  
6 to Donna and Elise present at the AGA PDT, they  
7 explained this as a reconciliation of the federal  
8 expenditures from SEFA compared to federal revenue;  
9 whereas, this is currently read to require a  
10 reconciliation between SEFA expenditures and total  
11 expenditures, which unless an agency is 100 percent  
12 federally funded, federal expenditures will never  
13 agree to total expenditures in a basic set of  
14 financial statements.

15 And, again, Donna and Elise walked through  
16 some great examples at the PDT, and they were  
17 comparing federal expenditures to federal revenue as  
18 a reconciliation.

19 HEARING OFFICER ROUBIDOUX: Okay.

20 MS. BELTRAN-SCHMITZ: Thank you.

21 HEARING OFFICER ROUBIDOUX: Is there any  
22 other oral comment on Section 10 amendments?

23 Okay. Are there any written comments on  
24 the Section 10 amendments?

25 No?

1           So, in Exhibit 6.1, which was DFA's  
2   April 25, 2025, letter, they contain several  
3   statements regarding their opposition to the proposed  
4   amendment to Section 10.S.2 of the Audit Rule,  
5   requiring a SOC-3 audit of the SHARE system.

6           And just summarizing their comments, DFA  
7   objects to the proposed definition of the SOC-3  
8   audit, and they also state that a SOC-3 audit will  
9   increase cyber security risk to the SHARE system.

10          DFA's written comments, objecting to the  
11   proposed amendment to Section 10.S.2 requiring a  
12   SOC-3 audit of the SHARE system, are germane and  
13   within the scope of this written -- of this current  
14   rulemaking proceeding, and so, accordingly, those  
15   written comments that have been pre-filed will be  
16   considered by the State Auditor, along with the rest  
17   of the rulemaking record.

18          DFA, in their April 25th letter, also  
19   requested a change to the exit conference and related  
20   confidentiality issues under Section 10.M.3 of the  
21   Audit Rule.

22          As the presiding here officer for this Rule  
23   Hearing, I reviewed the proposed amendments that were  
24   published by the Office of the State Auditor. I did  
25   not find any proposed amendment to Section 10.M.3 of

1 the Audit Rule. Therefore, DFA's written comment  
2 requesting changes to Section 10.M.3 is not germane  
3 and is outside the scope of this current rulemaking  
4 proceeding.

5 Okay. So, now, anything else on Section 10?

6 No? Okay.

7 Are there any comments on proposed  
8 amendments to Section 12 of the Audit Rule?

9 Any written comments on proposed amendments  
10 to Section 12?

11 So, with regard to Section 12, the Office  
12 of State Auditor received a letter at 4:00 p.m. on  
13 April 28th, 2025, from Robert Blumenfeld, of Mendel  
14 Blumenfeld & Pulido, PLLC, on behalf of three  
15 New Mexico Housing Authorities: The Albuquerque  
16 Housing Authority, the Mesilla Valley Public Housing  
17 Authority, and Santa Fe Civic Housing Authority.

18 The letter has been entered into the record  
19 as Exhibit 6.2. To briefly summarize the letter,  
20 Mr. Blumenfeld does not specifically identify any  
21 proposed amendment of the Audit Rule that he's  
22 commenting on. Instead, his letter generally states  
23 his views regarding the, quote, "challenges and  
24 burdens," end quote, associated with how the Office  
25 of State Auditor interprets the Audit Rule as applied

1 to housing authorities.

2 As the presiding Hearing Officer for this  
3 Rule Hearing, I reviewed the proposed amendments that  
4 were published by the Office of the State Auditor. I  
5 did not find any proposed amendments that change or  
6 affect audits of public housing authorities.

7 The only proposed amendment in this area is  
8 at Section 12.B.3 and 12.B.4.B, making a technical  
9 amendment to either spell out Public Housing  
10 Authority or, alternatively, use the acronym PHA.

11 Mr. Blumenfeld's written comment requesting  
12 changes to the audit requirements of Public Housing  
13 Authorities is therefore not germane and is outside  
14 the scope of this current rulemaking proceeding.

15 Moving on to proposed amendments to  
16 Section 14, are there any oral comments on the  
17 proposed amendments to Section 14 of the Audit Rule?

18 Any written comments on proposed amendments  
19 to Section 14 of the Audit Rule?

20 Are there any oral comments on the proposed  
21 amendments to Section 15 of the Audit Rule?

22 Any written comments on the proposed  
23 amendments to Section 15 of the Audit Rule?

24 Are there any oral comments on the proposed  
25 amendments to Section 16 of the Audit Rule?

1 Any written comments on proposed amendments  
2 to Section 16 of the Audit Rule?

3 Are there any additional oral or written  
4 comments on the proposed amendments to the  
5 Audit Rule?

6 This is the last chance to make an oral or  
7 written comment on the proposed amendments.

8 No? Okay.

9 As there are no further oral or written  
10 comments from the public, the public comment portion  
11 of the Rule Hearing is now closed. No further oral  
12 or written comments from the public on the proposed  
13 amendments will be accepted.

14 What happens next is the following. The  
15 complete rulemaking record, including all exhibits  
16 and a transcript of the Rule Hearing, will be  
17 compiled and provided to State Auditor Joseph Maestas  
18 for his review and consideration. State Auditor  
19 Maestes, after considering the rulemaking record, may  
20 then adopt, amend, or reject the proposed amendments.

21 Any amendments must fall within the scope  
22 of the current rulemaking proceeding. The final  
23 adopted amendments will be filed with the State  
24 Records Administrator and published in the New Mexico  
25 Register. Unless another date is stated or otherwise

1 provided by law, the effective date of the rule  
2 amendments shall be the date of publication in the  
3 New Mexico Register. A copy of the final adopted  
4 amendments will also be posted on the OSA website and  
5 the New Mexico Sunshine Portal.

6 The time is now 9:25 a.m. The Public Rule  
7 Hearing is now adjourned. I'd like to thank everyone  
8 for their participation today.

9 (Public Hearing concluded at 9:25 a.m.)

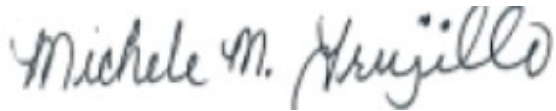
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REPORTER'S CERTIFICATE

I, MICHELE M. TRUJILLO, New Mexico CCR #226, do hereby certify that the proceedings of the above-entitled cause were reported by me stenographically on April 29th, 2025, and that the within transcript is a true and accurate transcription of my shorthand notes.

I FURTHER CERTIFY that I am neither an attorney nor counsel for nor related to or employed by any of the parties to the action, and that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.



Michele M. Trujillo  
Certified Court Reporter #226  
License Expires: 12/31/25



<hr/> <b>Exhibits</b> <hr/>	<b>25</b> 6:21 7:13,19,23 11:18 14:2	<hr/> <b>A</b> <hr/>	<b>April</b> 2:25 7:20,23 8:2 11:18 14:2,18 15:13
<b>Exhibit 1</b> 6:18,22	<b>25th</b> 14:18	<b>a.m.</b> 3:1 6:12	<b>area</b> 16:7
<b>Exhibit 2</b> 6:23 7:1	<b>28th</b> 7:20 8:2 15:13	<b>accept</b> 10:15	<b>assistant</b> 2:9
<b>Exhibit 3</b> 7:2,5	<b>29th</b> 2:25	<b>accepted</b> 17:13	<b>attendance</b> 5:18
<b>Exhibit 4</b> 7:6,11	<hr/> <b>3</b> <hr/>	<b>acronym</b> 16:10	<b>Attending</b> 3:24
<b>Exhibit 5</b> 7:12,16	<hr/> <b>3</b> 7:2,5 <hr/>	<b>Act</b> 4:4 5:15	<b>Attorney</b> 4:6,19
<b>Exhibit 6.1</b> 7:21,24 11:17 12:6 14:1	<hr/> <b>4</b> <hr/>	<b>action</b> 6:13	<b>audit</b> 2:3,22 3:8,12,19
<b>Exhibit 6.2</b> 7:25 8:3 15:19	<hr/> <b>4</b> 7:6,11 <hr/>	<b>Adam</b> 2:6 4:2	6:24 7:3,8 8:21 9:2,14, 21 10:23 11:6,11,14,21
<b>Exhibit 7</b> 8:4,6	<hr/> <b>4:00</b> 15:12 <hr/>	<b>additional</b> 17:3	12:2,8,11,17 14:4,5,8, 12,21 15:1,8,21,25
<hr/> <b>1</b> <hr/>	<hr/> <b>5</b> <hr/>	<b>Administration</b> 7:22 11:19	16:12,17,19,21,23,25 17:2,5
<b>1</b> 6:18,22 8:8,10,12	<hr/> <b>5</b> 7:12,16 12:25 <hr/>	<b>Administrative</b> 2:23	<b>auditor</b> 2:1,4,13,20
<b>1.24.25</b> 4:9	<hr/> <b>5600</b> 3:2 <hr/>	<b>Administrator</b> 17:24	3:6,10,24,25 7:14,15, 19 9:22 11:24 12:10
<b>10</b> 2:24 3:9,20 12:15,17 13:1,22,24 15:5	<hr/> <b>5:00</b> 7:20 <hr/>	<b>admitted</b> 8:8,11,12	14:16,24 15:12,25 16:4 17:17,18
<b>10.K.5</b> 13:2	<hr/> <b>6</b> <hr/>	<b>adopt</b> 17:20	<b>audits</b> 16:6
<b>10.M.3</b> 14:20,25 15:2	<hr/> <b>6</b> 2:24 3:9,19 6:20 7:17 10:23,25 <hr/>	<b>adopted</b> 17:23	<b>authorities</b> 15:15
<b>10.S.2</b> 14:4,11	<b>6.1</b> 7:21,24 11:17 12:6 14:1	<b>affect</b> 16:6	16:1,6,13
<b>100</b> 13:11	<hr/> <b>6.2</b> 7:25 8:3 15:19 <hr/>	<b>affiliation</b> 5:5 6:1	<b>authority</b> 3:17 9:8
<b>12</b> 2:24 3:9,20 15:8,10, 11	<hr/> <b>7</b> <hr/>	<b>AGA</b> 13:6	15:16,17 16:10
<b>12.B.3</b> 16:8	<hr/> <b>7</b> 8:4,6,8,10,12 11:2,4 <hr/>	<b>agency</b> 9:14,22 13:11	<b>Avenue</b> 3:3
<b>12.B.4.B</b> 16:8	<hr/> <b>8</b> <hr/>	<b>agree</b> 13:13	<b>aware</b> 3:13
<b>14</b> 2:24 3:9,20 16:16, 17,19	<hr/> <b>8</b> 11:6,9 <hr/>	<b>Albuquerque</b> 3:3 9:8 15:15	<hr/> <b>B</b> <hr/>
<b>15</b> 16:21,23	<hr/> <b>9</b> <hr/>	<b>allowed</b> 8:24	<b>basic</b> 13:13
<b>16</b> 2:24 3:9,20 16:25 17:2	<hr/> <b>9</b> 11:11,14 <hr/>	<b>alternatively</b> 16:10	<b>behalf</b> 15:14
<hr/> <b>2</b> <hr/>	<hr/> <b>9.A.1.C</b> 11:20 12:1,3 <hr/>	<b>amend</b> 17:20	<b>Bejarano</b> 2:1,13,14 3:25
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## NOTICE OF PROPOSED RULEMAKING AND PUBLIC HEARING

**Public Notice:** The New Mexico Office of the State Auditor (OSA) will hold a public hearing on April 29, 2025 at 9:00 a.m. The public hearing will be held in-person at CNM Workforce Training Center, 5600 Eagle Rock Avenue, NE, Albuquerque, NM 87113.

**Purpose:** The purpose of the public hearing is to receive public comments and to consider adoption of proposed amendments to 2.2.2 NMAC - Requirements for Contracting and Conducting Audits of Agencies (Audit Rule).

**Statutory Authority:** Audit Act, Section 12-6-12 NMSA 1978.

**Copies of Proposed Amendments:** Copies of the proposed amendments are available on the State Auditor's website at [osa.nm.gov](http://osa.nm.gov). A copy of the proposed amendments may also be requested by contacting Bernadet Martinez at the OSA by telephone at (505) 469-9706 or by email at [Bernadet.Martinez@osa.nm.gov](mailto:Bernadet.Martinez@osa.nm.gov).

**How to Comment on the Proposed Amendments:** Public comment regarding the proposed amendments can be made in person at the public rule hearing, by mail sent to Bernadet Martinez, Office of the State Auditor, 2540 Camino Edward Ortiz, Suite A, Santa Fe, NM 87507, or by email sent to [rulechange@osa.nm.gov](mailto:rulechange@osa.nm.gov). Written comments must be received by 5:00 pm mountain time April 28, 2025. All timely written comments will be posted on the OSA website at [osa.nm.gov](http://osa.nm.gov). Written comments may also be received at the in-person public hearing until the hearing is closed.

**Special Accommodations:** If you require special accommodations to participate in or attend the in-person hearing, please contact Bernadet Martinez at (505) 469-9706 or [Bernadet.Martinez@osa.nm.gov](mailto:Bernadet.Martinez@osa.nm.gov) at least one week prior to the meeting or as soon as possible.

### Summary of Proposed Amendments:

**2.2.2.2 Scope:** The proposed amendment removes auditors of the OSA from the scope of the Audit Rule and clarifies that the Audit Rule covers contracting for and performing professional services related to the examination of financial affairs and transactions of agencies and local public bodies.

**2.2.2.6 Objective:** The proposed amendment clarifies that the objective of the Audit Rule is to establish policies, procedures, rules and requirements for contracting and conducting financial audits, special audits, attestation engagements, performance audits and forensic accounting engagements for the examination of the financial affairs of all governmental agencies and local public bodies of the state of New Mexico.

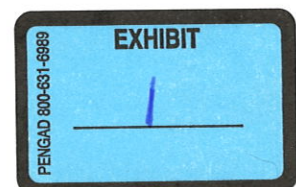
**2.2.2.7 Definitions:** The proposed amendment makes several technical corrections and inserts definitions for governmental accounting standards board statements (GASBS), mountain time (MT) and the New Mexico retiree health care authority (RHCA).

### 2.2.2.8 The Procurement and Audit Process:

Subsection A regarding firm profiles is amended to delete "attest" and insert "attestation" in accordance with the definition in Subsection A of 2.2.2.7 NMAC.

Subsection B regarding list of approved firms is amended to delete "attest" and insert "attestation".

Subsection C regarding disqualified firms is amended to delete "attest" and insert "attestation" and to make a technical correction regarding the acronym for agreed upon procedures.





Subsection F regarding procedures to obtain professional services from an independent public accountant (IPA) is amended to: (i) update a citation number in the uniform guidance procurement requirements; (ii) make style changes so that language is more concise; and (iii) update website addresses.

Subsection G regarding state auditor approval/rejection of unsigned contract is amended to make a technical correction to cite the Audit Act in upper case.

Subsection H regarding audit contract requirements is amended to update website addresses and terminology used by the taxation and revenue department regarding business tax identification numbers and to correct the name of the state agency that has the contracts review bureau.

Subsection K regarding subcontractor requirements is amended to: (i) update a citation number in generally accepted government auditing standards (GAGAS); (ii) update a website address; and (iii) make style changes so that language is more concise.

Subsection M regarding progress payments is amended to correct a misquote regarding the statutory language of Subsection B of Section 12-6-14 NMSA 1978.

Subsection N regarding contract amendment requirements is amended to: (i) delete "non-attest" and insert "non-attestation" in accordance with the definition in Subsection N of 2.2.2.7 NMAC; (ii) update a website address; and (iii) provide that contract amendments for fee increases shall only be approved by the state auditor if there is a significant change in the scope of the audit.

Subsection O regarding termination of audit contract requirements is amended to: (i) delete a citation regarding an old court order; (ii) provide that OSA shall provide written notice of contract termination to the IPA and the agency or local public body; and (iii) correct an internal cross reference that cited the wrong subsection of 2.2.2.16 NMAC.

#### **2.2.2.9 Report Due Dates:**

Subsection A regarding report due dates is amended to: (i) require that the mountain time zone applies to due dates for reports; (ii) make technical corrections regarding agency names, acronyms and website addresses; (iii) delete an obsolete reference to a report due date for certain agencies; (iv) correct errors in a cross reference to certain Subsections of 2.2.2.10 NMAC; (v) update a citation number in the American institute of certified public accountants (AICPA) codification of U.S. auditing standards (AU-C) and clarify that AU-C 700.43 requires that the auditor's report should be dated no earlier than the date on which the auditor has obtained sufficient appropriate audit evidence on which to base the auditor's opinion on the financial statements, including evidence that all statements and disclosures that the financial statement comprise have been prepared and that management has asserted that it has taken responsibility for those financial statements; and (vi) make style changes so that language is more concise.

Subsection B regarding delivery and release of the audit report is amended to require mountain time zone for delivery of the audit report and update a citation number in AICPA Audit and Accounting Guide (AAG GAS).

#### **2.2.2.10 General Criteria:**

Subsection A regarding annual financial and compliance audits is amended to update several citation numbers in AICPA Audit and Accounting Guide - Government auditing standard and single audits (AAG SLV) and to make style changes so that language is more concise.

Subsection B regarding governmental auditing, accounting and financial reporting standards is amended to make a technical correction indicating that the latest edition of 2.2.2 NMAC is amended.

Subsection C regarding financial statements and notes to the financial statements is amended to make a technical correction regarding acronyms.

Subsection D regarding requirements for preparation of financial statements is amended to make style changes so that language is more concise.

Subsection E regarding audit documentation requirements is amended to make style changes so that language is more concise.

Subsection G regarding reverting or non-reverting funds is amended to make style changes so that language is more concise.

Subsection H regarding referrals and risk advisories is amended to update website addresses and make style changes so that language is more concise.

Subsection I regarding state auditor workpaper requirement is amended to update a citation number in GASBS.

Subsection J regarding state compliance audit requirements is amended to correct state law references and update statute citations and make style changes so that language is more concise.

Subsection K regarding federal requirements is amended to add a new provision stating that in situations where expenditures reported in the schedule of expenditures of federal awards (SEFA) are not the same as the expenditures reported in the basic financial statements (due to outstanding loan balances, timing of grant awards, expenditures incurred in a prior period, etc.), a reconciliation shall be included in the notes to the SEFA.

Subsection L regarding audit finding requirements is amended to update several AU-C and AAG GAS citation numbers and make style changes so that language is more concise.

Subsection M regarding exit conference and related confidentiality issues is amended to (i) add a new provision stating that an IPA is not precluded from complying with communication requirements, between component auditors and the group auditor, detailed in *AU-C 600, Special Considerations - Audits of Group Financial Statements* and that state agency IPAs, constitutional institutes of higher education IPAs and state of New Mexico component unit IPAs are all component auditors for the New Mexico annual comprehensive financial report (ACFR) Group Audit; and (ii) update an AU-C citation number.

Subsection P regarding public monies is amended to make style changes so that language is more concise and to update an AU-C citation number.

Subsection Q regarding budgetary presentation is amended to make style changes so that language is more concise.

Subsection S regarding consideration of internal control and risk assessment in a financial statement audit is amended to add provisions regarding SOC-2 and SOC-3 audit reports.

Subsection T regarding required auditor's reports is amended to update several citation numbers in AAG SLV and AAG GAS.

Subsection V regarding joint powers agreements is amended to add a governmental accounting standards board (GASB) codification section number.

Subsection X regarding tax increment development districts is amended to delete language that is in Chapter 5, Article 15 NMSA 1978 and instead insert a cross reference to this statutory provision.

Subsection AA regarding GASBS 75, accounting and financial reporting for postemployment benefits other than pensions is amended to make style changes so that language is more concise.

#### **2.2.2.12 Specific Criteria:**

Subsection A regarding audits of state agencies is amended to make style changes so that language is more concise.



Subsection B regarding audits of housing authorities is amended to make style changes so that language is more concise.

Subsection C regarding audits of school districts is amended to make style changes so that language is more concise.

**2.2.2.14 Continuing Professional Education and Peer Review Requirements:**

Subsection B regarding peer review requirements is amended to delete the requirements that: (i) the IPA firm profile submission to the state auditor include a list of the governmental audits reviewed during the peer review; and (ii) the peer reviewer shall be familiar with this rule and that the state auditor provides audit rule training.

Subsection C regarding state auditor quality control reviews is amended to state that the state auditor may perform its own quality control review of IPA audit reports and working papers.

Subsection D regarding SOC Audit qualifications is amended to make a technical correction changing a word from upper case to lower case.

**2.2.2.15 Special Audits and Examinations:**

Subsection A regarding fraud, waste or abuse in government reported by agencies, IPAs or members of the public is amended to delete "non-attest" and insert "non-attestation" in accordance with the definition in Subsection N of 2.2.2.7 NMAC.

Subsection B regarding special audit or examination process is amended to delete "non-attest" and insert "non-attestation" in accordance with the definition in Subsection N of 2.2.2.7 NMAC and to make technical corrections such as changing a word from upper case to lower case or make style changes so that language is more concise.

Subsection C regarding agency-initiated special audits or examinations is amended to delete "non-attest" and insert "non-attestation" in accordance with the definition in Subsection N of 2.2.2.7 NMAC.

**2.2.2.16 Annual Procedures Required for Local Public Bodies with Annual Revenues Less than Five Hundred Thousand Dollars (\$500,000) (Tiered System):**

Subsection F regarding requirements of the IPA selected to perform the AUP is amended to update a website address and an AU-C citation number.

Subsection H regarding report due dates, notification letters and confidentiality is updated to require that the mountain time zone applies to due dates and to make style changes so that language is more concise.



This is an amendment to 2.2.2 NMAC Sections 2, 6-10, 12, 14-16 effective xx/xx/2025.

**2.2.2.2 SCOPE:** All agencies and local public bodies as defined by the Audit Act and designated independent public accountants ~~[including auditors of the OSA]~~ contracting for and 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, 7/16/2024; A, xx/xx/2025]

**2.2.2.6 OBJECTIVE:** The objective is to establish ~~[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]~~ policies, procedures, rules and requirements for contracting and conducting financial audits, special audits, attestation engagements, performance audits, and forensic accounting engagements 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, 7/16/2024; A, xx/xx/2025]

**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:

**A. Definitions beginning with the letter "A":**

- (1) "AAG GAS" means AICPA Audit and Accounting Guide - Government ~~[auditing standards]~~ 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.
- (4) "ACFR" means the state of New Mexico's annual comprehensive financial report.
- (5) "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" means an examination of the financial affairs or performance of an agency or local public body pursuant to the authority of the Audit Act, 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 accountants, including auditors of the OSA, performing audit or 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 AICPA codification of 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":**

(1) "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.

(2) "CPE" means continuing professional education.

**D. Definitions beginning with the letter "D":** "DFA" means the New Mexico department of finance and administration.

**E. Definitions beginning with the letter "E":** "ERB" means the New Mexico ~~[education]~~ educational retirement board.

**F. Definitions beginning with the letter "F":**

- (1) "FCD" means financial control division of DFA.
- (2) "FDS" means financial data schedule.
- (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.

**G. Definitions beginning with the letter "G":**

(1) "GAAP" means generally accepted accounting principles 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.

(3) "GAGAS" means generally accepted government auditing standards, or the most recent revision of the yellow book issued by the comptroller general of the United States.

(4) "GASB" means governmental accounting standards board.

(5) "GASBS" means governmental accounting standards board statements.

~~(5)~~ (6) "GSD" means the New Mexico general services department.

**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 department of housing and urban development.

**I. Definitions beginning with the letter "I":**

(1) "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 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] "MT" means mountain time zone.**

**N. Definitions beginning with the letter "N":**

(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 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": "Office" or "OSA" means the office of the state auditor of New Mexico.**

**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) "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) "REC" means regional education cooperative.

(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.

(3) **“RHCA”** means the New Mexico retiree health care authority.

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

S. **Definitions beginning with the letter “S”:**

(1) **“SHARE”** means statewide human resources accounting and management reporting system.

(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”:** **“Tier”** is established based on the amount of each LPB’s annual revenue, pursuant to Section 12-6-3 NMSA 1978.

U. **Definitions beginning with the letter “U”:**

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

(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 internal control weakness, non-compliance, fraud, or illegal acts.

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, 7/16/2024; A, xx/xx/2025]

#### 2.2.2.8 THE PROCUREMENT AND AUDIT PROCESS:

A. **Firm profiles:** For an IPA to be included on the ~~[state auditor’s]~~ OSA’s list of approved firms to perform audits, AUPs, and other ~~[attest]~~ attestation 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]~~ attestation 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]~~ attestation 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]~~ attestation 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]~~ attestation 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]~~ attestation 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]~~ attestation 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]~~ non-attestation engagements, or otherwise do not meet applicable requirements, shall not be included on the list of approved firms.

**C. Disqualified firms:** An IPA firm may not be included on the list of approved firms for audits, AUPs, and other ~~[attest]~~ attestation 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]~~ AUP 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~~ 200.327 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 consecutively for ~~longer~~ more than eight years. After the eighth consecutive year, the agency or LPB must obtain a proposal for another IPA for at least two years before returning to the prior IPA.

(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 I NMSA 1978) or equivalent home rule procurement provisions: GSD Rule 1.4.1 NMAC, Procurement Code Regulations, if applicable; DFA Rule, 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]~~ regarding campaign contribution disclosure forms. ~~[In the event that]~~ If 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.

(5) If the agency is a component unit 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.

(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.

(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]~~ OSA-Connect website (~~(www.osa-app.org)~~, ~~In order to~~ at [osaconnect.osa.nm.gov](http://osaconnect.osa.nm.gov)). 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.

(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.

(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]~~ If 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) REC's, 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]~~ If 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.

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

(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.

(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.

(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.

(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.

(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 six consecutive years;
- (c) lack of competence or staff availability;



report:

- (d) circumstances that may cause untimely delivery of the audit report or AUP
- (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 of the ~~[audit-act]~~ 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](http://www.osa-app.org)] [osaconnect.osa.nm.gov](http://osaconnect.osa.nm.gov) 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]~~ GSD's contracts review bureau, have the IPA's ~~[combined reporting system]~~ business tax identification number verified by the New Mexico taxation and revenue department 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]~~ if 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](http://www.osanm.org) [osa.nm.gov](http://osa.nm.gov). The OSA shall not approve audit contracts for such a firm without the required contingency subcontractor form.

(2) ~~[In the event]~~ If an IPA chooses to use a subcontractor to assist the IPA in working on a specific audit, then the IPA shall 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 on the approved IPA list. Subcontractors are subject to an independence analysis, which may include the auditor rotation rule requirements of Subsection F of 2.2.2.8 NMAC.

(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 "based upon demonstration of work in progress, the state auditor may authorize progress payments to the independent auditor by the agency being audited under contract." Such payments shall be made 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]~~ non-attestation 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~~] osaconnect.osa.nm.gov 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]~~ Because 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]~~ if there is 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, *Ligil v. King*, No. SF 92 1487(C)). The notice of termination of the contract shall be in writing]~~. The OSA shall provide written notice of the contract termination to the IPA and the agency or LPB.

(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~~ Subsection H of 2.2.2.16 NMAC. [2.2.2.8 NMAC - Rp, 2.2.2.8 NMAC, 3/28/2023; A, 7/16/2024; A, xx/xx/2025]

#### 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 11:59 p.m. MT 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) REC's, 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, New Mexico taxation and revenue department, New Mexico children youth and families department, New Mexico department of health, New Mexico department of transportation, New Mexico department of workforce solutions, HSD, GSD, New Mexico early childhood education and care department, ~~[SLO,] state land office and [NMCD]~~ New Mexico corrections department: November 15;

(e) 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]~~ RHCA: 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, ERB and [retiree health care authority]~~ RHCA schedules of employer allocations reports and related employer guides required by ~~[Subsections Z]~~ Subsections Y and AA 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)~~ (m) 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.sao.nm.org](http://www.sao.nm.org) ~~osa.nm.gov~~). 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 11:59 p.m. MT.

(4) AU-C [700.41] 700.43 requires that the auditor's report [to] should 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] no earlier than the date on which the auditor has obtained sufficient appropriate audit evidence on which to base the auditor's opinion on the financial statements, including evidence that all statements and disclosures that the financial statements comprise have been prepared and that management has asserted that it has taken responsibility for those financial statements. AU-C 580.20 requires that 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]~~ If 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 11:59 p.m. MT 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) All reports prepared by IPAs shall be addressed to the state auditor, the agency executive and governing body (if applicable). Reports prepared by the OSA will be addressed to the agency executive and governing body (if applicable). The OSA will 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, the OSA will issue an "OSA review notes" communication that lists any comments, corrections, or issues that are required to be addressed by the IPA prior to final submission to the OSA.

Within five days of receipt of the "OSA review notes" communication, the IPA shall submit the corrected report with the following items to the OSA: an electronic searchable version of the audit report labeled "final" in PDF format, a written response to any OSA comments, corrections, and issues, and an electronic excel version of the summary of findings report and any other required electronic schedule if applicable, and an electronic excel version of the schedule of asset management costs for investing agencies, if applicable (all available at [~~www.osa.nm.gov~~] [osa.nm.gov](http://www.osa.nm.gov)). The OSA will not release the report until all comments, corrections, and issues have been addressed and the searchable electronic PDF version of the report and all required electronic excel schedules have been received. 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;
- (e) not contain any embedded scripts or executables, including sound or movie (multimedia) objects;
- (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 five-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~~] 13.29-.31 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 reports as required by this rule, and has therefore been designated as late, 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 unless and until the late audit report has been submitted. Status reports 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, the agency must send the IPA a copy of the quarterly status report. IPAs engaged to audit 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] 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;
- (2) the current status of any ongoing audit work;
- (3) any obstacles encountered by the agency in completing its audit; and
- (4) a projected completion date for the financial audit report.

[2.2.2.9 NMAC - Rp, 2 2.2.9 NMAC, 3/28/2023; A, 7/16/2024; A, xx/xx/2025]

#### **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. Component units of component units are also subject to OSA review, and must be reported using the government financial reporting format. 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)~~ supplementary information (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]~~ 17.103 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]~~ 4.169-4.184 and exhibit ~~[4-1]~~ 4-2 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]~~ 4-2 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]~~ Except for 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, as amended.

**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 (USA). 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]~~ USA, and provide complete, accurate, and timely information to the IPA as requested to meet the audit report due date ~~[imposed]~~ specified 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~~ specified 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]~~ USA 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)]~~ 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]~~ SIDreferrals@osa.nm.gov 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]~~ described 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.sao.nm.org/risk\_advisories]~~ osa.nm.gov/accountability-office/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]~~ 34.32–37 (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]~~ 620.A1-A2 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, 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, 2.42.2 NMAC.
- (3) Public ~~[Money Act]~~ finances and public money, 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]~~ 22-8-49 NMSA 1978.
- (5) Investment of ~~[Public Money Act]~~ public money, 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 (ERA), Sections 22-11-1 to 22-11-55 NMSA 1978. IPAs shall test to ensure eligible contributions are remitted to ~~[ERA]~~ ERB. 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 the ERA and test that employees are properly excluded.
- (8) Sale of ~~[Public Property Act]~~ public property, 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]~~ 6-6-20 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, 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]~~ RHCA. ~~[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]~~ RHCA and other benefits. IPAs shall evaluate risk associated with employees excluded from ~~[NMRHCA]~~ RHCA 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]~~ 22-10A-40.1 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.

(5) In situations where expenditures reported in the schedule of expenditures of federal awards (SEFA) are not the same as the expenditures reported in the basic financial statements (due to outstanding loan balances, timing of grant awards, expenditures incurred in a prior period, etc.), a reconciliation shall be included in the notes to the SEFA.

**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] 265.

(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 and 13.36 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] 13.39 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] 13.39 fn [38] 40). 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] Council on financial assistance reform 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] 13.54).

(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 2.2.2.15 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 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]~~ If 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. This also does not preclude an IPA from complying with communication requirements, between component auditors and the group auditor, detailed in AU-C 600, Special Considerations - Audits of Group Financial Statements. State agency IPAs, constitutional institutes of higher education IPAs and state of New Mexico component unit IPAs are all component auditors for the New Mexico ACFR Group Audit.

(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] 260.10 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 upon discovery of any 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. If not immediately known, a follow-up notification shall include an estimate of the dollar amount involved, if known or estimable, and a description of the apparent violation, including names of persons involved and any action taken or planned.

**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]~~ FCD's manual of model accounting practices (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]~~ 501.04-06. 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)]~~ 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 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]~~ If 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]~~ the state treasurer's office (STO) 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]~~ described in 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<sup>2</sup>] GAO's Standards for Internal Control in the Federal Government, known as the "Green Book", which may be adopted by state, local, and quasi-governmental ~~[Agencies]~~ agencies as a framework for an internal control system.

(2) ~~[The department of information technology is to engage in]~~ There shall be a SOC-2 compliance audit of the SHARE system annually, starting in 2024. A SOC-2 report and a SOC-3 report shall be delivered to the state auditor by the date specified in the audit contract.

(3) A SOC-2 audit report is a restricted use report, due to the confidential information contained in the report, and shall not be publicly released. A SOC-3 audit report is a general use report suitable for public release. Procedures performed in a SOC-3 audit are substantially the same as in a SOC-2 audit. A SOC-3 audit report includes an assertion about achievement of service commitments and system requirements (and what those are), system boundaries, and the service auditor's opinion of management's assertion. The detailed controls are not disclosed in the system description and there is no description of the service auditor's tests of controls and results thereof. Essentially, a SOC-3 audit is a redacted version of a SOC-2.

~~[(3)]~~ (4) The OSA may select additional agencies' application systems of record for SOC ~~[Audit]~~ 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~~ chapter 17 of AAG SLV. Guidance is provided in footnote 4 to appendix A to ~~chapter 16~~ chapter 17 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]~~ shall reference 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)]~~ 200, AAG GAS ~~[4.89]~~ 4.92, 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]~~ Sections J50.113 and C50.

**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]~~ A tax increment development district (TIDD) created pursuant to the Tax Increment for Development Act (Chapter 5, Article 15 NMSA 1978) 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 use of their respective schedule of employer allocations report to create journal entries generally required by GASBS 68. The calculations 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 year. 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)]~~ 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]~~ other post-employment benefits (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, 7/16/2024; A, xx/xx/2025]

**2.2.2.12 SPECIFIC CRITERIA:** The specific criteria described in this section shall be considered in planning and conducting governmental audits. These requirements are not intended to be all-inclusive; therefore, OSA recommends that IPAs review the NMSA and NMAC while planning governmental audits.

**A. Pertaining to audits of state agencies:**

(1) Due dates for agency audits: audit reports of agencies under the oversight of DFA FCD are due to OSA in accordance with the requirements of Subsection D of Section 12-6-3 NMSA 1978 and Subsection A of 2.2.2.9 NMAC.

(2) All the individual SHARE funds shall be reported in the financial statements, either within the basic financial statements or as SI.

(3) Accounts payable at year-end and reversion calculation: If goods and services were received (as defined by generally accepted accounting principles) by the end of the fiscal year but not paid for by the end of the fiscal year, an accounts payable shall be reported for the respective amount due in both the government-wide financial statements and the fund financial statements. The "actual" expenditures in the budgetary comparison exclude any accounts payable that were not paid timely and therefore require a request to the financial control division to pay prior year bills out of the current year budget. They are paid out of the budget of the following fiscal year. An agency's reversions are calculated using the *budgetary basis expenditures* because the agency does not



have the legal authority to obligate the state for liabilities once the appropriation period has lapsed. Thus, the agency cannot keep the cash related to accounts payable that were not paid timely. This results in a negative fund balance in the modified accrual basis financial statements of a reverting fund.

(4) Net position/fund balance:

(a) Pursuant to GASBS 63.8 the government-wide statement of net position and the proprietary fund statement of net position show net position as:

- (i) net investment in capital assets as defined by GASBS 63.9;
- (ii) restricted (distinguishing between major categories of restrictions) as defined by GASBS 63.10; and
- (iii) unrestricted as defined by GASBS 63.11.

(b) Governmental fund financial statement fund balances shall be reported in accordance with GASBS 54.

(5) Book of record:

(a) The state maintains the centralized accounting system SHARE. The SHARE data and reports are the original book of record that the auditor is auditing. Each fiscal year, the agency shall record all audit adjusting journal entries in SHARE. The financial information in SHARE shall agree to the agency's audited financial statements. ~~[with the exception of]~~ except for accounts payable as ~~[explained]~~ described in Subsection A of 2.2.2.12 NMAC. If the agency maintains a separate accounting system, it shall be reconciled with the SHARE system and all applicable adjustments shall be recorded in SHARE in the month in which the transactions occurred. DFA FCD provides guidance to agencies, which IPAs shall review, regarding policy and procedure requirements. These documents are available on the DFA FCD website and include:

- (i) the manual of model accounting practices (MAPs);
- (ii) various white papers, yearly closing instructions; and
- (iii) various accounting guideline memos.

(b) The statement of revenues and expenditures in the audit report shall be presented in accordance with GAAP, by function or program classification and object code. However, the budgetary comparison statements shall be presented using the level of appropriation reflected in the final approved budget. The SHARE chart of accounts reflects the following appropriation unit levels:

Appropriation unit code/appropriation  
unit description

200	personal services & employee benefits
300	contractual services
400	Other
500	other financing uses
600	non-budgeted

(c) Revenue categories of appropriations to state agencies are listed below. The budgetary comparison statements for state agencies shall be presented in the audit report by the revenue categories shown below and by the expenditure categories that appear in the agency's final approved budget.

- (i) state general fund;
- (ii) other state funds;
- (iii) internal service funds/inter-agency transfers; or
- (iv) federal funds.

(d) For more detail about the SHARE chart of accounts see the DFA website.

(6) Reversions to state general fund:

(a) All reversions to the state general fund shall be identified in the financial statements or the notes to the financial statements by the fiscal year of appropriation (i.e., reversion to state general fund - FY 16). The gross amount of the appropriation and the gross amount of the reversion shall be shown separately.

(b) Subsection A of Section 6-5-10 NMSA 1978 states "all unreserved undesignated fund balances in reverting funds and accounts as reflected in the central accounting system as of June 30 shall revert by September 30 to the general fund. The division may adjust the reversion within 45 days of release of the audit report for that fiscal year." Failure to transfer reverting funds timely in compliance with the statute requires an audit finding.

(7) Non-reciprocal (not payments for materials or services rendered) interfund (internal) activity includes:

- (a) transfers; and
- (b) reimbursements (GASBS 34.410):

(i) intra-agency transfers between funds within the agency shall offset (i.e. balance). Reasons for intra-agency transfers shall be fully explained in the notes to the financial statements. In the separate audit reports of state agencies, transfers between their internal funds are shown as other financing sources or uses in the fund financial statements and as transfers (that get eliminated) in the government-wide financial statements;

(ii) inter-agency transfers (between an agency's internal funds and other funds of the state that are outside the agency such as state general fund appropriations, special appropriations, bond proceeds appropriations, reversions to the state general fund, and transfers to/from other state agencies) shall be segregated from intra-agency transfers and fully explained in the notes to the financial statements along with the agency number and SHARE fund number to whom and from whom transferred. The transfers may be detailed in supporting schedules rather than in the notes, but agency and SHARE fund numbers shall be shown. The schedule shall be presented on the modified accrual basis. The IPA is responsible for performing audit procedures on all such inter-agency transfers.

(c) Regarding inter-agency transfers between legally separate component units and the primary government (the state of New Mexico):

(i) if the inter-agency transfer is between a blended component unit of the state and other funds of the state, then the component unit's separately issued financial statements report such activity between itself and the primary government as revenues and expenses. When the blended component unit is included in the primary government's financial statements, such inter-agency transfers are reclassified as transfers (GASBS 34.318);

(ii) all resource flows between a discretely presented component unit of the state and other funds of the state shall be reported as external transactions - revenues and expenses - in the primary government's financial statements and the component unit's separately issued financial statements (GASBS 34.318);

(d) All transfers to and from SHARE fund 853, the state general fund appropriation account, shall be clearly identifiable in the audit report as state general fund appropriations, reversions, or collections;

(e) Reimbursements are transfers between funds that are used to reallocate the revenues and expenditures/expenses to the appropriate fund. Reimbursements are not reported as inter-fund activity in the financial statements.

(8) ~~[General services department]~~ GSD capital projects: in general, GSD records the state of New Mexico capitalized land and buildings for which it is responsible, in its accounting records. The cost of furniture, fixtures, and moveable equipment owned by agencies is to be capitalized in the accounting records of the agency that purchased them. The agency shall capitalize those assets based on actual amounts expended in accordance with GSD instructions issued in 2.20.1.10 NMAC.

(9) State-owned motor vehicle inventory: successful management of state-owned vehicles pursuant to the Transportation Services Act (Sections 15-8-1 to 15-8-11 NMSA 1978) is dependent on reliable and accurate capital assets inventory records and physical verification of that inventory. Thus, the annual audit of state agencies shall include specific tests of the reliability of the capital assets inventory and verification that a physical inventory was conducted for both the agency's owned vehicles and long-term leased vehicles.

(10) Independent auditor's report: The independent auditor's report for state agencies, district attorneys, district courts, and the educational institutions created by New Mexico Constitution Article XII, Sec. 11 shall include an emphasis of matter paragraph referencing the summary of significant accounting principles disclosure regarding the reporting agency. The emphasis of matter paragraph shall indicate that the financial statements are not intended to present the financial position and changes in financial position of the primary government, the state of New Mexico, but just the financial position and the changes in financial position of the department. The emphasis of matter paragraph shall follow the example provided in AAG SLV ~~[16-103]~~ 17.103 ex. A-17

(11) Budgetary basis for state agencies: the state budget is adopted on the modified accrual basis of accounting except for accounts payable accrued at the end of the fiscal year that do not get accrued by the statutory deadline per Section 6-10-4 NMSA 1978. Those accounts payable that do not get paid timely or accrued by the statutory deadline shall be paid out of the next year's budget. If an agency needs to recognize additional accounts payable amounts that were not accrued by the statutory deadline, then the budgetary statements and the

fund financial statements require a reconciliation of expenditures, as discussed at Subsection Q of 2.2.2.10 NMAC. All transactions are recorded in the state's book of record, SHARE, under the modified accrual basis of accounting except for accounts payable not meeting the statutory deadline; therefore, the "actual" expenditures in the budgetary comparison schedules equal the expenditures as recorded in SHARE for the fund. Encumbrances related to single year appropriations lapse at year end. Appropriation periods are sometimes for periods in excess of 12 months (multiple-year appropriations). When multiple-year appropriation periods lapse, the authority for the related budgets also lapse and encumbrances can no longer be charged to those budgets. The legal level of budgetary control shall be disclosed in the notes to the financial statements. Per Subsection C of Section 9 of the General Appropriation Act of 2017, all agencies, including legislative agencies, may request category transfers among personal services and employee benefits, contractual services and other. Therefore, the legal level of budgetary control is the appropriation program level (A-Code, P-Code, and Z-Code). A-Codes pertain to capital outlay appropriations (general obligation/severance tax or state general fund). P-Codes pertain to program/operating funds. Z-Codes pertain to special appropriations. The IPA shall compare total expenditures for each program to the program's approved final budget to evaluate compliance.

(12) Budgetary comparisons of state agencies shall show the original and final appropriated budget (same as final budget approved by DFA), the actual amounts on the budgetary basis, and a column with the variance between the final budget and actual amounts. If a state agency presents budgetary comparisons by fund, the appropriation program code(s) (A-Code, P-Code, and Z-Code) shall be reported on the budgetary comparison schedule.

(13) Accounting for special capital outlay appropriations financed by bond proceeds.

(14) Amounts "due from other state agencies" and "due to other state agencies": if a state agency reports amounts "due from" or "due to" other state agencies the notes shall disclose the amount "due to" or "due from" each agency, the name of each agency, the SHARE fund account numbers, and the purpose of the account balance.

(15) Investments in the state general fund investment pool (SGFIP): these balances are presented as cash and cash equivalents in the statements of net position and the balance sheets of the participant agencies, with the exception of the component appropriation funds (state general fund). The notes to the financial statements of the component appropriation funds shall contain GASBS 40 disclosures for the SGFIP. This disclosure may refer the reader to the separate audit report for STO for additional information regarding the SGFIP.

(16) Format for the statement of activities: state agencies that have more than one program or function shall use the financial statement format presented in GASBS 34, Illustrations B-1 through B-4. The simplified statement of activities (GASBS 34, Illustration B-5) may not be used for agencies that have multiple programs or functions. GASBS 34.41 requires governments to report direct expenses for each function.

**B. Pertaining to audits of housing authorities:**

(1) Housing authorities within the state of New Mexico consist of regional housing authorities, component units or departments of local governments, component units of housing authorities, and housing authorities created by intergovernmental agreements between cities and counties that are authorized to exercise all powers under the Municipal Housing Law, Section 3-45-1 *et seq.*, NMSA 1978.

(2) The financial statements of a housing authority that is a department, program or component unit of a primary government shall be included in the financial audit report of the primary government. IPAs shall use GASB guidelines as found in relevant GASBS to determine the correct presentation of the component unit.

(3) Audits of [PHAs] public housing authorities (PHAs) that are departments of a local government shall be conducted by the same IPA that performs the audit of the local government. Separate audit contracts shall not be approved.

(a) Local governments are encouraged to include representatives from PHAs that are departments of the local government in the IPA selection process.

(b) The IPA shall include the housing authority's governing board and management representatives in the entrance and exit conferences with the primary government. If it is not possible to hold such combined conferences, the IPA shall hold separate entrance and exit conferences with housing authority's management and a member of the governing board. 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, 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 no later than 72 hours before the proposed conference.

(4) The following information relates to housing authorities that are component units of a local government.

(a) The housing authority shall account for financial activity in proprietary funds.  
 (b) At the ~~[public housing authority's]~~ PHA's discretion, the agency may "be audited separately from the audit of its local primary government entity, other than a housing department of a local government or a regional housing authority. If a separate audit is made, the public housing authority audit shall be included in the local primary government entity audit and need not be conducted by the same auditor who audits the financial affairs of the local primary government entity" (Subsection E of Section 12-6-3 NMSA 1978). [Statute] The Audit Act further stipulates in Subsection A of Section 12-6-4 NMSA 1978 that "a public housing authority other than a regional housing authority shall not bear the cost of an audit conducted solely at the request of its local primary government entity."

(c) Audit reports of separate audits of component unit housing authorities shall be released by the state auditor separately from the primary government's report under a separate release letter to the housing authority.

(5) Public housing authorities and their IPAs shall follow the requirements of *Guidelines on Reporting and Attestation Requirements of Uniform Financial Reporting Standards* (UFRS), which is available on the U.S. department of housing and urban development's website under a search for UFRS. Additional administrative issues related to audits of public housing authorities follow.

(a) Housing authority audit contracts include the cost of the audit firm's AU-C 725 opinion on the FDS. The preparation and submission cost for this HUD requirement shall be included in the audit contract. The public housing authority shall electronically submit a final approved FDS based on the audited financial statements no later than nine months after the public housing authority's fiscal year end. The IPA shall:

(i) electronically report on the comparison of the electronic FDS submission in the real estate assessment center staging database through the use of an identification (ID) and password;

(ii) include an electronic version of the FDS in the audit report;

(iii) render an AU-C 725 opinion on the FDS; and

(iv) explain in the notes any material differences between the FDS and the financial statements.

(b) The IPA shall consider whether any fee accountant used by the housing authority is a service organization and, if applicable, follow the requirements of AU-C 402 regarding service organizations.

(c) The IPA shall provide the housing authority with an itemized cost breakdown by program area for audit services rendered in conjunction with the housing authority.

(6) Single audit reporting issue: If a single audit is performed on the separate audit report for the public housing authority, including the housing authority's schedule of expenditures of federal awards, the housing authority federal funds do not need to be subjected a second time to a single audit during the single audit of the primary government. In this situation, the housing authority's federal expenditures do not need to be included in the primary government's schedule of expenditures of federal awards. See AAG GAS 6.15 for more information.

#### C. Pertaining to audits of school districts:

(1) ~~[In the event that]~~ If a state-chartered charter school subject to oversight by PED is not subject to the requirement to use the same auditor as PED, ~~[that] the charter school [is reminded that]~~ shall submit their audit contract ~~[shall be submitted]~~ to PED for approval. Charter schools shall ensure that sufficient time is allowed for PED review. ~~[refer to]~~ See Subsection F of 2.2.2.8 NMAC for the due date for submission of the audit contract to the OSA.

#### (2) ~~[REC]~~ REC audits:

(a) A separate financial and compliance audit is required on activities of RECs. The IPA shall provide copies of the REC report to the participating school districts and PED once the report has been released by the state auditor.

(b) Audits of RECs shall include tests for compliance with 6.23.3 NMAC.

(c) Any "on-behalf" payments for fringe benefits and salaries made by RECs for employees of school districts shall be accounted for in accordance with GASB Cod. Sec. N50.135 and communicated to the employer in accordance with GASB Cod. Sec. N50.131.

(d) The audit report of each REC shall include a cash reconciliation schedule which reconciles the cash balance as of the end of the previous fiscal year to the cash balance as of the end of the current fiscal year. This schedule shall account for cash in the same categories used by the REC in its monthly cash reports to the PED. If there are differences in cash per the REC financial statements and cash per the REC accounting records, the IPA shall provide the adjusting entries to the REC to reconcile cash per the financial statements to cash

per the REC accounting records. If cash per the REC accounting records differs from the cash amount the REC reports to PED in the monthly cash report, the IPA shall issue a finding which explains that the PED reports do not reconcile to the REC accounting records.

(3) School district audits shall address the following issues:

(a) Audits of school districts shall include tests for compliance with 6.20.2 NMAC and PED's manual of procedures for public schools accounting and budgeting (PSAB), with specific emphasis on supplement 7, cash controls.

(b) The audit report of each school district shall include a cash reconciliation schedule which reconciles the cash balance as of the end of the previous fiscal year to the cash balance as of the end of the current fiscal year. This schedule is also required for each charter school chartered by a school district and each charter school chartered by PED. This schedule shall account for cash in the same categories used by the district in its monthly cash reports to PED. Subsection D of 6.20.2.13 NMAC states that school districts shall use the "cash basis of accounting for budgeting and reporting". The financial statements are prepared on the accrual basis of accounting. Subsection E of 6.20.2.13 NMAC states that "if there are differences between the financial statements, school district records and department records, the IPA should provide the adjusting entries to the school district to reconcile the report to the school district records." If there are differences between the school district records and the PED report amounts, other than those explained by the adjusting entries, the IPA shall issue a finding which explains that the PED reports do not reconcile to the school district records.

(c) Any joint ventures or other Agencies created by a school district are agencies subject to the Audit Act.

(d) Student activity funds: Risk should be assessed, and an appropriate sample tested regarding controls over student activity funds.

(e) Relating to capital expenditures by the New Mexico public school facilities authority (PSFA), school districts shall review capital expenditures made by PSFA for repairs and building construction projects of the school district. School districts shall also determine the amount of capital expenditures that shall be added to the capital assets of the school district and account for those additions properly. The IPA shall test the school district capital asset additions for proper inclusion of these expenditures.

(f) Sub-funds of the general fund: school district audit reports shall include individual fund financial statements for the following sub-funds of the general fund: operational, transportation, instructional materials and teacherage (if applicable).

(4) Pertaining to charter schools:

(a) A charter school is a conversion school or start-up school within a school district authorized by the local school board or PED to operate as a charter school. A charter school is considered a public school, accredited by the state board of public education and accountable to the school district's local school board, or PED, for ensuring compliance with applicable laws, rules and charter provisions. A charter school is administered and governed by a governing body in a manner set forth in the charter.

(b) Certain GASBS 14 criteria (as amended by GASBS 39, 61, and 80) shall be applied to determine whether a charter school is a component unit of the chartering entity (the district or PED). The chartering agency (primary government) shall make the determination whether the charter school is a component unit of the primary government.

(c) No charter school that has been determined to be a component unit may be omitted from the financial statements of the primary government based on materiality. All charter schools that are component units shall be included in the basic financial statements using one of the presentation methods described in GASBS 34.126, as amended.

**D. Pertaining to audits of counties:** Tax roll reconciliation county governments: Audit reports for counties shall include two SI schedules.

(1) The first one is a "tax roll reconciliation of changes in the county treasurer's property taxes receivable" showing the June 30 receivable balance and a breakout of the receivable for the most recent fiscal year ended, and a total for the previous nine fiscal years. Per Subsection C of Section 7-38-81 NMSA 1978, property taxes that have been delinquent for more than 10 years, together with any penalties and interest, are presumed to have been paid.

(2) The second schedule titled "county treasurer's property tax schedule" shall show by property tax type and agency, the amount of taxes: levied; collected in the current year; collected to-date; distributed in the current year; distributed to-date; the amount determined to be uncollectible in the current year; the uncollectible amount to-date; and the outstanding receivable balance at the end of the fiscal year. This information is necessary for proper revenue recognition on the part of the county as well as on the part of the recipient agencies.

under GASBS 33. If the county does not have a system set up to gather and report the necessary information for the property tax schedule, the IPA shall issue a finding.

**E. Pertaining to audits of educational institutions:**

(1) Educational institutions are reminded that audit contracts shall be submitted to HED for approval. Refer to Subsection F of 2.2.2.8 NMAC for the due date for submission of the audit contract to the OSA.

(2) Budgetary comparisons: the legal level of budgetary control per 5.3.4.10 NMAC shall be disclosed in the notes to the financial statements. The state auditor requires that every educational institution's audit report include budgetary comparisons as SI. The budgetary comparisons shall be audited and an auditor's opinion shall be rendered. An AU-C 725 opinion does not meet this requirement. The budgetary comparisons shall show columns for: the original budget; the revised budget; actual amounts on the budgetary basis; and a variance column. The IPA shall confirm the final adjusted and approved budget with HED. The IPA shall compare the financial statement budget comparison to the related September 15 budget submission to HED. The only differences that should exist between the HED budget submission and the financial statement budgetary comparisons are adjustments made by the institution after September 15 and audit adjustments. If the HED budget submission does not tie to the financial statement budgetary comparison, taking into account only those differences, then the IPA shall write a related finding. A reconciliation of actual revenue and expense amounts on the budgetary basis to the GAAP basis financial statements shall be disclosed at the bottom of the budgetary comparisons or in the notes to the financial statements. The reconciliation is required only at the "rolled up" level of "unrestricted and restricted - all operations" and shall include revenues and expenses. HED approved the following categories which shall be used for the budgetary comparisons.

(a) Unrestricted and restricted – All operations (schedule 1): beginning fund balance/net position; unrestricted and restricted revenues; state general fund appropriations; federal revenue sources; tuition and fees; land and permanent fund; endowments and private gifts; other; total unrestricted & restricted revenues; unrestricted and restricted expenditures; instruction; academic support; student services; institutional support; operation and maintenance of plant; student social & cultural activities; research; public service; internal services; student aid, grants & stipends; auxiliary services; intercollegiate athletics; independent operations; capital outlay; renewal & replacement; retirement of indebtedness; total unrestricted & restricted expenditures; net transfers; change in fund balance/net position (budgetary basis); ending fund balance/net position.

(b) Unrestricted instruction & general (schedule 2): beginning fund balance/net position; unrestricted revenues; tuition; miscellaneous fees; federal government appropriations; state government appropriations; local government appropriations; federal government contracts/grants; state government contracts/grants; local government contracts/grants; private contracts/grants; endowments; land & permanent fund; private gifts; sales and services; other; total unrestricted revenues; unrestricted expenditures; instruction; academic support; student services; institutional support; operation & maintenance of plant; total unrestricted expenditures; net transfers; change in fund balance/net position (budgetary basis); ending fund balance/net position.

(c) Restricted instruction & general (schedule 3): beginning fund balance/net position; restricted revenues; tuition; miscellaneous fees; federal government appropriations; state government appropriations; local government appropriations; federal government contracts/grants; state government contracts/grants; local government contracts/grants; private contracts/grants; endowments; land & permanent fund; private gifts; sales and services; other; total restricted revenues; restricted expenditures; instruction; academic support; student services; institutional support; operation & maintenance of plant; total restricted expenditures; net transfers; change in fund balance/net position (budgetary basis); ending fund balance/net position.

(3) Educational institutions shall present their financial statements using the business type activities model.

(4) Compensated absence liability is reported as follows: the statement of net position reflects the current portion of compensated absences under current liabilities and the long-term portion of compensated absences under noncurrent liabilities.

(5) Component unit issues: educational institutions shall comply with the requirements of Subsection A of 2.2.2.10 NMAC. Additionally:

(a) individual component unit budgetary comparisons are required if the component unit has a "legally adopted budget." A component unit has a legally adopted budget if it receives any federal funds, state funds, or any other appropriated funds whose expenditure authority derives from an appropriation bill or ordinance that was signed into law; and

(b) there is no level of materiality for reporting findings of component units that do not receive public funds. All component unit findings shall be disclosed in the primary government's audit report.

(6) Management discussion and analysis (MD&A): The MD&A of educational institutions shall include analysis of significant variations between original and final budget amounts and between final budget amount and actual budget results. The analysis shall include any currently known reasons for those variations that are expected to have a significant effect on future services or liquidity.

(7) Educational institutions established by Section 11 of Article XII of the New Mexico state constitution shall provide the department of finance and administration's financial control division with a draft copy of their financial statements excluding opinions and findings, pursuant to Subsection A of 2.2.2.12 NMAC.

**F. Pertaining to audits of investing agencies:** Investing agencies, which are defined as STO, PERA, ERB, and the state investment council, shall prepare schedules of asset management costs which include management fee information by investment class.

(1) For all asset classes except private asset classes and alternative investment classes, the schedules shall, at minimum, include the following information:

(a) relating to consultants: the name of the firm or individual, the location of the consultant (in-state or out-of-state), a brief description of investments subject to the agreement, and fees;

(b) relating to third-party marketers (as defined in Section 6-8-22 NMSA 1978): the name of the firm or individual, the location of the marketer (in-state or out-of-state), a brief description of investments subject to the agreement, and any fees, commissions or retainers;

(c) relating to traditional asset classes: name of the investment, asset class, value of the investment, and fees (including both "direct" and "embedded" costs).

(2) For private asset classes and alternative investment classes, the schedules shall, at minimum, include the following information:

(a) relating to consultants: the aggregate fees by asset class and consultant location (in-state or out-of-state), and a brief description of investments included in each asset class;

(b) relating to third-party marketers (as defined in Section 6-8-22 NMSA 1978): aggregate fees, commissions and retainers by asset class and third-party marketer location (in-state or out-of-state), and a brief description of investments included in each asset class;

(c) relating to alternative asset classes: the total fees by asset class (including both "direct" and "embedded" costs), and a brief description of the investments included in each asset class.

(3) These schedules shall be included as unaudited other information in the audit report.

**G. Pertaining to audits of local public bodies; budgetary comparisons:** Auditors shall test local public body budgets for compliance with required reserves and disclose those reserves on the face of the financial statements and in notes financial statements (if applicable).

[2.2.2.12 NMAC - Rp. 2.2.2.12 NMAC, 3/28/2023; A, 7/16/2024; A, xx/xx/2025]

#### **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) 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;

and

(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]~~ may perform 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]~~ may 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]~~ 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, 3/28/2023; A, 7/16/2024; A, xx/xx/2025]

#### 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 Subsection C of Section 12-6-3 NMSA 1978, the OSA may initiate special investigation or examination procedures in connection with reports of financial fraud, waste and abuse in government. Reports received or created by the 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 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 and any resulting special audit, performance audit, attestation engagement or forensic accounting or other ~~[non-attest]~~ non-attestation engagement 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]~~ non-attestation engagement, or other existing or potential engagement regarding the financial affairs or transactions of an agency.

(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]~~ non-attestation 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]~~ non-attestation 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) If the OSA makes inquiries of agencies as part of the investigation process, 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]~~ non-attestation 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]~~ non-attestation 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]~~ non-attestation 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]~~ non-attestation 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]~~ 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]~~ non-attestation 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]~~ a 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](http://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](http://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]~~ If 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]~~ non-attestation 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]~~ non-attestation 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]~~ non-attestation engagement the state auditor may apply to the district court of Santa Fe ~~[County]~~ 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]~~ attestation engagements or Subsection D of 2.2.2.15 NMAC for ~~[non-attest]~~ non-attestation 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]~~ non-attestation 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]~~ non-attestation 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]~~ Subsection A 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~~ non-attestation engagement relating to financial fraud, waste or abuse, but the agency has not been designated by the state auditor for the engagement pursuant to this rule. For purposes of this rule, "special audit, attestation engagement, performance audit, forensic accounting engagement, or ~~non-attest~~ non-attestation 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) 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.

**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.

(1) 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."

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

(a) 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);

(b) 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);

(c) 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);

(d) 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);

(e) recommendation addressing each condition and cause; and

(f) 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, 7/16/2024; A, xx/xx/2025]

**2.2.2.16 ANNUAL FINANCIAL PROCEDURES REQUIRED FOR LOCAL PUBLIC BODIES WITH ANNUAL REVENUES LESS THAN FIVE HUNDRED THOUSAND DOLLARS (\$500,000) (TIERED SYSTEM):**

**A. Annual revenue and state funded capital outlay expenditures determine type of financial reporting:** All local public bodies shall comply with the requirements of Section 6-6-3 NMSA 1978. Pursuant to

Section 12-6-3 NMSA 1978, the annual revenue of a local public body determines the type of financial reporting a local public body shall submit to the OSA. Local public bodies are mutual domestic water consumers associations, land grants, incorporated municipalities, and special districts.

(1) The annual revenue of a local public body shall be calculated on a cash basis as follows:

(a) Revenue shall exclude capital outlay funds. OSA defines capital outlay funds as funds expended pursuant to the Property Control Act definition of a capital outlay project. Per section 15-3B-2 NMSA 1978 "Capital outlay project" means the acquisition, improvement, alteration or reconstruction of assets of a long-term character that are intended to continue to be held or used, including land, buildings, machinery, furniture and equipment. A "capital outlay project" includes all proposed expenditures related to the entire undertaking.

(b) Revenue shall exclude federal or private grants. For the purpose of 2.2.2.16 NMAC "private grant" means funding provided by a non-governmental entity.

(2) For the purposes of 2.2.2.16 NMAC "state funded capital outlay expenditures" are expenditures made pursuant to any funding provided by the New Mexico legislature for a capital outlay project as defined in the Property Control Act, Section 15-3B-2 NMSA 1978, either received directly by the local public body or disbursed through an administering agency.

**B. Determination of revenue and services:** Annually, following the procedures described in Subsection F of 2.2.2.8 NMAC, the state auditor shall provide local public bodies written authorization to obtain services to conduct a financial audit or other procedures. Upon receipt of the authorization, a local public body shall determine its annual revenue in accordance with Subsection A of 2.2.2.16 NMAC. The following requirements for financial reporting apply to the following annual revenue amounts (tiers):

(1) if a local public body's annual revenue is less than ten thousand dollars (\$10,000) and the local public body did not directly expend at least fifty percent of, or the remainder of, a single capital outlay award, then the local public body is exempt from submitting a financial report to the state auditor, except as otherwise provided in Subsection C of 2.2.2.16 NMAC (tier one);

(2) if a local public body's annual revenue is ten thousand dollars (\$10,000) or more but less than fifty thousand dollars (\$50,000), then the local public body is exempt from submitting a financial report to the state auditor, except as otherwise provided in Subsection C of 2.2.2.16 NMAC (tier two);

(3) if a local public body's annual revenue is less than fifty thousand dollars (\$50,000), and the local public body expended at least fifty percent of, or more of, a single capital outlay award during the fiscal year, then the local public body shall procure the services of an IPA for the performance of a tier three AUP engagement in accordance with the audit contract for a tier three AUP engagement;

(4) if a local public body's annual revenue is greater than fifty thousand dollars (\$50,000) but less than two hundred-fifty thousand dollars (\$250,000), then the local public body shall procure the services of an IPA for the performance of a tier four AUP engagement in accordance with the audit contract for a tier four AUP engagement;

(5) if a local public body's annual revenue is greater than fifty thousand dollars (\$50,000) but less than two hundred-fifty thousand dollars (\$250,000), and the local public body expended any capital outlay funds during the fiscal year, then the local public body shall procure the services of an IPA for the performance of a tier five AUP engagement in accordance with the audit contract for a tier five AUP engagement;

(6) if a local public body's annual revenue is two hundred-fifty thousand dollars (\$250,000) or greater, but less than five hundred thousand dollars (\$500,000), the local public body shall procure services of an IPA for the performance of a tier six AUP engagement in accordance with the audit contract for a tier six AUP engagement; the report shall include at a minimum, a compilation of financial statements and a financial report consistent with the agreed-upon procedures;

(7) if a local public body's annual revenue is five hundred thousand dollars (\$500,000) or more, this section shall not apply and the local public body shall procure services of an IPA for the performance of a financial and compliance audit in accordance with other provisions of this rule;

(8) notwithstanding the annual revenue of a local public body, if the local public body expended seven hundred-fifty thousand dollars (\$750,000) or more of federal funds subject to a federal single audit during the fiscal year then the local public body shall procure a single audit.

**C. Exemption from financial reporting:** A local public body that is exempt from financial reporting to the state auditor pursuant to Subsection B of 2.2.2.16 NMAC shall submit written certification to LGD and the state auditor. The certification shall be provided on the form made by the state auditor, available through OSA-Connect. The local public body shall certify, at a minimum:

(1) the local public body's annual revenue for the fiscal year; and

(2) that the local public body did not expend fifty percent of or the remainder of a single capital outlay award during the fiscal year.

(3) The OSA will not accept the certification of exemption from financial reporting for the current year until the prior year certifications or AUP reports (whichever is appropriate) have been submitted.

**D. Procurement of IPA services:** A local public body required to obtain an AUP engagement shall procure the services of an IPA in accordance with Subsection F of 2.2.2.8 NMAC.

**E. Access to Records and Documents:** For any AUP the agency should produce all documents necessary to conduct the engagement.

**F. Requirements of the IPA selected to perform the AUP:**

(1) The IPA shall provide the local public body with a dated engagement letter during the planning stages of the engagement, describing the services to be provided. See Subsection F of 2.2.2.10 NMAC for applicable restrictions on the engagement letter.

(2) The IPA may not subcontract any portion of the services to be performed under the contract with the local public body except for the activation of a contingency subcontractor form in the event the IPA is unable to complete the engagement.

(3) The IPA shall hold an entrance conference and an exit conference with the local public body. The entrance and exit conference shall occur in the forum agreed to by the local public body and the IPA, to include virtual or telephonic options. The OSA reserves the right to require an in-person entrance or exit conference. 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, 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 no later than 72 hours before the proposed conference or meeting.

(4) The IPA shall submit the report to the OSA for review in accordance with the procedures described at Subsection B of 2.2.2.9 NMAC. Before submitting the report to OSA for review, the IPA shall review the report using the AUP report review guide available on the OSA's website at [www.saonm.org](http://www.saonm.org) [osa.nm.gov](http://osa.nm.gov). The report shall be submitted to the OSA for review with the completed AUP report review guide. Once the AUP 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, the AUP 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] 260.10 to 260.14.

**G. Progress payments:**

(1) Progress payments up to ninety-five percent of the contract amount do not require state auditor approval and may be made by the local public body if the local public body ensures that progress payments made do not exceed the percentage of work completed by the IPA. If requested by the state auditor, the local public body shall provide the OSA a copy of the approved progress billing(s).

(2) Final payments from ninety-five percent to one hundred percent may be made by the local public body 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. In this situation a letter releasing the report to the agency will be issued when it is appropriate to release the report.

**H. Report due dates, notification letters and confidentiality:**

(1) For local public bodies with a June 30 fiscal year-end that qualify for the tiered system, the report or certification due date is December 15. Local public bodies with a fiscal year end other than June 30 shall submit the AUP report or certification no later than five months after the fiscal year-end. Late AUP reports (not the current reporting period) are due not more than six months after the date the contract was executed. An electronic copy of the report shall be submitted to the OSA. AUP reports submitted via fax or email shall not be accepted. A copy of the signed dated management representation letter shall be submitted with the report. If a due date falls on a weekend or holiday, or if the OSA is closed due to inclement weather, the report is due the following business day by 11:59 p.m. MT. If the report is mailed to the state auditor, it shall be postmarked no later than the due date to be considered filed by the due date. If the due date falls on a weekend or holiday the audit report shall be postmarked by the following business day.

(2) As soon as the IPA becomes aware that circumstances exist that will make the local public body's AUP report be submitted after the applicable due date, the auditor shall notify the state auditor of the situation 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 AUP 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 AUP 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 the local public body. If the IPA will not meet the expected report submission date, then the IPA shall send a revised notification letter. ~~[In the event]~~ If the contract was signed after the report due date, the notification letter shall still be submitted to the OSA explaining the reason the AUP 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 deadline, and then rejected by the OSA, making the report late when resubmitted.

(3) Local public body personnel shall not release information to the public relating to the AUP engagement until the report is released and has become a public record pursuant to Section 12-6-5 NMSA 1978. At all times during the engagement and after the AUP report becomes a public record, the IPA shall follow applicable professional standards and 2.2.2 NMAC regarding the release of any information relating to the AUP engagement.

**I. Findings:** All AUP engagements shall report as findings any fraud, illegal acts, non-compliance or internal control deficiencies, consistent with Section 12-6-5 NMSA 1978. The findings shall include the required content listed at Subparagraph (d) of Paragraph (1) of Subsection L of 2.2.2.10 NMAC.

**J. Review of AUP reports and related workpapers:** AUP shall be reviewed by the OSA for compliance with professional standards and the professional services contract. Noncompliant reports shall be rejected and not considered received. Such reports shall be returned to the firm and a copy of the rejection letter shall be sent to the local public body. If the OSA rejects and returns an AUP report to the IPA, the report shall be corrected and resubmitted to the OSA by the due date, or the IPA shall include a finding for non-compliance with the due date. The IPA 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. The OSA encourages early submission of reports to avoid findings for late reports. After its review of the AUP report for compliance with professional standards and the professional services contract, the OSA shall authorize the IPA to print and submit the final report. An electronic version of the AUP report, in PDF format, as described at Subsection B of 2.2.2.9 NMAC, shall all be delivered to the OSA within five business days. The OSA shall not release the AUP report until the electronic version of the report is received by the OSA. The OSA shall provide the local public body with a letter authorizing the release of the report after the required five-day waiting period. Released reports may be selected by the OSA for comprehensive report and workpaper reviews. After such a comprehensive report and workpaper review is completed, the OSA shall issue a letter to advise the IPA about the results of the review. The IPA shall respond to all review comments as directed. If during the course of its review, the OSA finds significant deficiencies that warrant a determination that the engagement was not performed in accordance with provisions of the contract, applicable AICPA standards, or the requirements of this rule, any or all of the following action(s) may be taken:

- (1) the IPA may be required to correct the deficiencies in the report or audit documentation, and reissue the AUP report to the agency and any others receiving copies;
- (2) the IPA's eligibility to perform future engagements may be limited in number or type of engagement pursuant to Subsection D of 2.2.2.8 NMAC;
- (3) for future reports, for some or all contracts, the IPA may be required to submit working papers with the reports for review by the OSA prior to the release of the report; or
- (4) the IPA may be referred to the New Mexico public accountancy board for possible licensure action.

**K. IPA independence:** IPAs shall maintain independence with respect to their client agencies in accordance with the requirements of the current government auditing standards.  
[2.2.2.16 NMAC - Rp, 2.2.2.16 NMAC, 3/28/2023; A, 7/16/2024; A, xx/xx/2025]



# Current Audit Rule (2.2.2 NMAC, issued 3/28/2023; amended 7/16/2024)

2.2.2-NMAC-issued-3.28.23-amended-7.16.24



## 2025 Audit Rule Making

Notice of Proposed Rulemaking and Public Hearing



Proposed Amendments

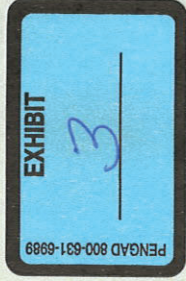


Notification to Legislative Council Service



## Comments

Click the link below to view audit rules from previous years.







## Rule Hearing Search

<input type="text"/>		
Hearing Date:	Comments	Agency:
This Month ▼	Deadline Date:	Office of the State Auditor ▼
	All ▼	
<input type="button" value="Search"/>		

Return to Search Results**Proposed Rule Name:**

2025 Audit Rule Rulemaking

**Agency:**

Office of the State Auditor

**Purpose:**

The purpose of the public hearing is to receive public comments and to consider adoption of proposed amendments to 2.2.2 NMAC - Requirements for Contracting and Conducting Audits of Agencies (Audit Rule), Sections 2, 6-10, 12, 14-16.

**Summary:**

2.2.2.2 Scope: The proposed amendment removes auditors of the OSA from the scope of the Audit Rule and clarifies that the Audit Rule covers contracting for and performing professional services related to the examination of financial affairs and transactions of agencies and local public bodies.

2.2.2.6 Objective: The proposed amendment clarifies that the objective of the Audit Rule is to establish policies, procedures, rules and requirements for contracting and conducting financial audits, special audits, attestation engagements, performance audits and forensic accounting engagements for the examination of the financial affairs of all governmental agencies and local public bodies of the state of New Mexico.

2.2.2.7 Definitions: The proposed amendment makes several technical corrections and inserts definitions for governmental accounting standards board statements (GASBS), mountain time (MT) and the New Mexico retiree health care authority (RHCA).

**2.2.2.8 The Procurement and Audit Process:**

Subsection A regarding firm profiles is amended to delete "attest" and insert "attestation" in accordance with the definition in Subsection A of 2.2.2.7 NMAC.

Subsection B regarding list of approved firms is amended to delete "attest" and insert "attestation".

Subsection C regarding disqualified firms is amended to delete "attest" and insert "attestation" and to make a technical correction regarding the acronym for agreed upon procedures.

Subsection F regarding procedures to obtain professional services from an independent public accountant (IPA) is amended to: (i) update a citation number in the uniform guidance procurement requirements; (ii) make style changes so that language is more concise; and (iii) update website addresses.

Subsection G regarding state auditor approval/rejection of unsigned contract is amended to make a technical correction to cite the Audit Act in upper case.

Subsection H regarding audit contract requirements is amended to update website addresses and terminology used by the taxation and revenue department regarding business tax identification numbers and to correct the name of the state agency that has the contracts review bureau.

Subsection K regarding subcontractor requirements is amended to: (i) update a citation number in generally accepted government auditing standards (GAGAS); (ii) update a website address; and (iii) make style changes so that language is

**How to submit Comments:**

Public comment regarding the proposed amendments can be made in person at the public rule hearing, by mail sent to Bernadet Martinez, Office of the State Auditor, 2540 Camino Edward Ortiz, Suite A, Santa Fe, NM 87507, or by email sent to [rulechange@osa.nm.gov](mailto:rulechange@osa.nm.gov) (<mailto:rulechange@osa.nm.gov>). Written comments must be received by 5:00 pm mountain time April 28, 2025. All timely written comments will be posted on the OSA website at [osa.nm.gov](https://osa.nm.gov) (<https://osa.nm.gov>). Written comments may also be received at the in-person public hearing until the hearing is closed.

**When are comments due:**

4/28/2025 5:00 PM

**Hearing Date:**

The public rule hearing date/time have changed. The new date/time are shown below

4/29/2025 9:00 AM

**Public Hearing Location:**

CNM Workforce Training Center, 5600 Eagle Rock Avenue, NE, Albuquerque, NM 87113 4/29/2025 (9:00 AM -10:00 AM )

**How to participate:**

Public comment regarding the proposed amendments can be made in person at the public rule hearing, by mail sent to Bernadet Martinez, Office of the State Auditor, 2540 Camino Edward Ortiz, Suite A, Santa Fe, NM 87507, or by email sent to [rulechange@osa.nm.gov](mailto:rulechange@osa.nm.gov) (<mailto:rulechange@osa.nm.gov>). Written comments must be received by 5:00 pm mountain time April 28, 2025. All timely written comments will be posted on the OSA website at [osa.nm.gov](https://osa.nm.gov) (<https://osa.nm.gov>). Written comments may also be received at the in-person public hearing until the hearing is closed.



more concise.

Subsection M regarding progress payments is amended to correct a misquote regarding the statutory language of Subsection B of Section 12-6-14 NMSA 1978.

Subsection N regarding contract amendment requirements is amended to: (i) delete "non-attest" and insert "non-attestation" in accordance with the definition in Subsection N of 2.2.2.7 NMAC; (ii) update a website address; and (iii) provide that contract amendments for fee increases shall only be approved by the state auditor if there is a significant change in the scope of the audit.

Subsection O regarding termination of audit contract requirements is amended to: (i) delete a citation regarding an old court order; (ii) provide that OSA shall provide written notice of contract termination to the IPA and the agency or local public body; and (iii) correct an internal cross reference that cited the wrong subsection of 2.2.2.16 NMAC.

#### 2.2.2.9 Report Due Dates:

Subsection A regarding report due dates is amended to: (i) require that the mountain time zone applies to due dates for reports; (ii) make technical corrections regarding agency names, acronyms and website addresses; (iii) delete an obsolete reference to a report due date for certain agencies; (iv) correct errors in a cross reference to certain Subsections of 2.2.2.10 NMAC; (v) update a citation number in the American institute of certified public accountants (AICPA) codification of U.S. auditing standards (AU-C) and clarify that AU-C 700.43 requires that the auditor's report should be dated no earlier than the date on which the auditor has obtained sufficient appropriate audit evidence on which to base the auditor's opinion on the financial statements, including evidence that all statements and disclosures that the financial statement comprise have been prepared and that management has asserted that it has taken responsibility for those financial statements; and (vi) make style changes so that language is more concise.

Subsection B regarding delivery and release of the audit report is amended to require mountain time zone for delivery of the audit report and update a citation number in AICPA Audit and Accounting Guide (AAG GAS).

#### 2.2.2.10 General Criteria:

Subsection A regarding annual financial and compliance audits is amended to update several citation numbers in AICPA Audit and Accounting Guide - Government auditing standard and single audits (AAG SLV) and to make style changes so that language is more concise.

Subsection B regarding governmental auditing, accounting and financial reporting standards is amended to make a technical correction indicating that the latest edition of 2.2.2 NMAC is amended.

Subsection C regarding financial statements and notes to the financial statements is amended to make a technical correction regarding acronyms.

Subsection D regarding requirements for preparation of financial statements is amended to make style changes so that language is more concise.

Subsection E regarding audit documentation requirements is amended to make style changes so that language is more concise.

Subsection G regarding reverting or non-reverting funds is amended to make style changes so that language is more concise.

Subsection H regarding referrals and risk advisories is amended to update website addresses and make style changes so that language is more concise.

Subsection I regarding state auditor workpaper requirement is amended to update a citation number in GASBS.

Subsection J regarding state compliance audit requirements is amended to correct state law references and update statute citations and make style changes so that language is more concise.



Subsection K regarding federal requirements is amended to add a new provision stating that in situations where expenditures reported in the schedule of expenditures of federal awards (SEFA) are not the same as the expenditures reported in the basic financial statements (due to outstanding loan balances, timing of grant awards, expenditures incurred in a prior period, etc.), a reconciliation shall be included in the notes to the SEFA.

Subsection L regarding audit finding requirements is amended to update several AU-C and AAG GAS citation numbers and make style changes so that language is more concise.

Subsection M regarding exit conference and related confidentiality issues is amended to (i) add a new provision stating that an IPA is not precluded from complying with communication requirements, between component auditors and the group auditor, detailed in AU-C 600, Special Considerations - Audits of Group Financial Statements and that state agency IPAs, constitutional institutes of higher education IPAs and state of New Mexico component unit IPAs are all component auditors for the New Mexico annual comprehensive financial report (ACFR) Group Audit; and (ii) update an AU-C citation number.

Subsection P regarding public monies is amended to make style changes so that language is more concise and to update an AU-C citation number.

Subsection Q regarding budgetary presentation is amended to make style changes so that language is more concise.

Subsection S regarding consideration of internal control and risk assessment in a financial statement audit is amended to add provisions regarding SOC-2 and SOC-3 audit reports.

Subsection T regarding required auditor's reports is amended to update several citation numbers in AAG SLV and AAG GAS.

Subsection V regarding joint powers agreements is amended to add a governmental accounting standards board (GASB) codification section number.

Subsection X regarding tax increment development districts is amended to delete language that is in Chapter 5, Article 15 NMSA 1978 and instead insert a cross reference to this statutory provision.

Subsection AA regarding GASBS 75, accounting and financial reporting for postemployment benefits other than pensions is amended to make style changes so that language is more concise.

#### 2.2.2.12 Specific Criteria:

Subsection A regarding audits of state agencies is amended to make style changes so that language is more concise.

Subsection B regarding audits of housing authorities is amended to make style changes so that language is more concise.

Subsection C regarding audits of school districts is amended to make style changes so that language is more concise.

#### 2.2.2.14 Continuing Professional Education and Peer Review Requirements:

Subsection B regarding peer review requirements is amended to delete the requirements that: (i) the IPA firm profile submission to the state auditor include a list of the governmental audits reviewed during the peer review; and (ii) the peer reviewer shall be familiar with this rule and that the state auditor provides audit rule training.

Subsection C regarding state auditor quality control reviews is amended to state that the state auditor may perform its own quality control review of IPA audit reports and working papers.

Subsection D regarding SOC Audit qualifications is amended to make a technical correction changing a word from upper case to lower case.

#### 2.2.2.15 Special Audits and Examinations:

Subsection A regarding fraud, waste or abuse in government reported by agencies, IPAs or members of the public is amended to delete "non-attest" and insert "non-attestation" in accordance with the definition in Subsection N of 2.2.2.7 NMAC.

Subsection B regarding special audit or examination process is amended to delete "non-attest" and insert "non-attestation" in accordance with the definition in Subsection N of 2.2.2.7 NMAC and to make technical corrections such as changing a word from upper case to lower case or make style changes so that language is more concise.

Subsection C regarding agency-initiated special audits or examinations is amended to delete "non-attest" and insert "non-attestation" in accordance with the definition in Subsection N of 2.2.2.7 NMAC.

#### 2.2.2.16 Annual Procedures Required for Local Public Bodies with Annual Revenues Less than Five Hundred Thousand Dollars (\$500,000) (Tiered System):

Subsection F regarding requirements of the IPA selected to perform the AUP is amended to update a website address and an AU-C citation number.

Subsection H regarding report due dates, notification letters and confidentiality is updated to require that the mountain time zone applies to due dates and to make style changes so that language is more concise.

#### Statutes:

NMSA 1978, § 12-6-12

#### Administratives Codes:

NMAC 2.2.2

#### Rule Complete Copy :

Copies of the proposed amendments are available on the State Auditor's website at [osa.nm.gov](https://osa.nm.gov) (<https://osa.nm.gov>). A copy of the proposed amendments may also be requested by contacting Bernadet Martinez at the OSA by telephone at (505) 469-9706 or by email at [Bernadet.Martinez@osa.nm.gov](mailto:Bernadet.Martinez@osa.nm.gov) (<mailto:Bernadet.Martinez@osa.nm.gov>).

#### Corrections:

Not available

#### Rule Explanatory Statement:

Not available

#### Related New Mexico Register Publications:

[Click Here to access Related New Mexico Publications](https://www.srca.nm.gov/nmac/nmregister/xxxvi/OSAnotice_xxxvi06.pdf)

([https://www.srca.nm.gov/nmac/nmregister/xxxvi/OSAnotice\\_xxxvi06.pdf](https://www.srca.nm.gov/nmac/nmregister/xxxvi/OSAnotice_xxxvi06.pdf))

For any additional information or questions concerning this rule making or posting please contact:

Bernadet Martinez  
[bernadet.martinez@osa.nm.gov](mailto:bernadet.martinez@osa.nm.gov)  
(505) 469-9706

#### Last Updated Date

4/21/2025 12:07 PM

① If the document is not visible on the previewer, please download the file.

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## Office of State Auditor rulemaking

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**From** Susanne Roubidoux <susanne.roubidoux@osa.nm.gov>

**Date** Tue 3/25/2025 10:45 AM

**To** lcs@nmlegis.gov <lcs@nmlegis.gov>

**Cc** Joseph M. Maestas <Joseph.Maestas@osa.nm.gov>; Ricky A. Bejarano <Ricky.Bejarano@osa.nm.gov>; David Craig <david.craig@osa.nm.gov>; David Pena <david.pena@osa.nm.gov>; Michelle Vattano <michelle.vattano@osa.nm.gov>

 2 attachments (646 KB)

OSAnotice\_xxxvi06.pdf; 2.2.2 Pre-Approved Amendment 2.25.2025 plv.pdf;

Dear Legislative Council Service:

This notification is provided to the Legislative Council Service pursuant to NMSA 1978, Section 14-4-2(E) (7) for distribution to appropriate interim and standing legislative committees.

The Office of the State Auditor (OSA) will conduct a public rulemaking hearing on April 29, 2025 at 9:00 a.m. at the CNM Workforce Training Center, 5600 Eagle Rock Avenue, Albuquerque NM 87113. The purpose of the hearing is to consider proposed amendments to 2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies (Audit Rule), Sections 2, 6-10, 12, 14-16. Copies of the Notice of Proposed Rulemaking and Public Hearing (Notice) and the proposed amendments are available on the OSA website at [Audit Rule - NM Office of the State Auditor](#) and on the New Mexico sunshine portal at [statenm.my.salesforce-sites.com/public/SSP\\_RuleHearingSearchPublic](https://statenm.my.salesforce-sites.com/public/SSP_RuleHearingSearchPublic)

A copy of the Notice and the proposed amendments are also attached for your convenience.

Sincerely,



**Susanne Roubidoux**  
**Chief General Counsel**

**Office of the State Auditor**

2540 Camino Edward Ortiz, Suite A  
Santa Fe, NM 87507  
Cell: (505) 490-5542  
OSA Main: (505) 476-3800  
Susanne.Roubidoux@osa.nm.gov





Cabinet Secretary Wayne Propst  
Deputy Cabinet Secretary Renee Ward  
Acting State Controller Mark Melhoff

Governor Michelle Lujan Grisham

**To:** Joseph Maestas, *State Auditor*  
New Mexico Office of the State Auditor  
[Joseph.Maestas@osa.nm.gov](mailto:Joseph.Maestas@osa.nm.gov)

**From:** Mark Melhoff, *Acting State Controller*, Financial Control Division  
New Mexico Department of Finance and Administration

**Date:** April 25, 2025

**RE: PUBLIC COMMENT REGARDING 2025 PROPOSED CHANGES TO THE NEW MEXICO STATE  
AUDIT RULE**

This memorandum shall serve as public comment by the Financial Control Division ("FCD") of the Department of Finance and Administration ("DFA") regarding proposed changes to the 2025 Audit Rules under the New Mexico Administrative Code ("NMAC"). The FCD's public comments are as follows.

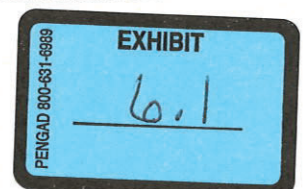
***The DFA strongly opposes the proposed changes to the audit rule requiring an SOC-3 audit report for the SHARE system.***

DFA expresses its opposition to the proposed amendments to NMAC 2.2.2.10.S.2, which mandate DFA submit a SOC-3 SHARE report to the state auditor for publication. Initially, DFA articulates its specific disagreement with the definition of a SOC-3 audit report as outlined in NMAC 2.2.2.10.S.2.

By definition, a SOC-2 audit evaluates an organization's controls related to data security, availability, processing integrity, confidentiality, and privacy. A SOC-3 audit report provides a public overview of these controls. However, both audits and reports address vulnerabilities related to these five Trust Services Criteria ("TSC").

A SOC-2 audit report requires an in-depth assessment of internal controls, including:

- **Security:** Focuses on preventing unauthorized access, misuse, data deletion, or disruption of services. This includes testing firewalls, intrusion detection systems, access controls, encryption, and antivirus software.
- **Availability:** Ensures systems are accessible to users when needed, including backup and recovery processes.
- **Processing Integrity:** Tests the accuracy, completeness, and reliability of data processing.
- **Confidentiality:** Focuses on preventing unauthorized disclosure of sensitive information.





- **Privacy:** Ensures compliance with privacy laws and regulations related to data handling.

A SOC-3 audit report requires a public assurance determination of internal controls, including:

- **Security:** Provides a public overview of the organization's security controls.
- **Availability:** Describes the organization's controls for ensuring system availability.
- **Processing Integrity:** Summarizes the organization's controls for accurate data processing.
- **Confidentiality:** Outlines the organization's controls for protecting sensitive information.
- **Privacy:** Provides a public overview of the organization's data privacy practices.

NMAC 2.2.2.10.S.2's definition of a SOC-3 audit report assumes that a SOC-2 audit report can simply be redacted to generate a SOC-3 audit report that the auditor may make public. However, creating a SOC-3 report is not as straightforward as redacting a SOC-2 audit report. Generally, due to the nature of the SHARE system, a SOC-2 audit requires a thorough examination of DFA/SHARE's internal controls, accompanied by detailed testing results to ensure sufficiency. A SOC-3 audit is typically regarded as inappropriate for scenarios where detailed internal control information and specific test results are necessary, given the high complexity of the SHARE system and specific regulatory requirements for the system.

Additionally, publishing a SOC-3 audit report will increase the cybersecurity risks to the SHARE system, leading to the disclosure of valuable information to actors seeking to exploit the financial data contained in the SHARE system. A public report detailing the SHARE system's TSC internal controls will lead to:

1. **Unauthorized Access.** A SOC-3 audit report will provide an overview of SHARE's internal security controls and practices. Malicious actors could use this information to identify vulnerabilities and exploit them.
2. **Misuse of Controls.** Malicious actors could use the descriptions and summaries of SHARE's controls for accurate data processing and system availability in a SOC-3 audit report to bypass and manipulate security controls and access SHARE.
3. **Insider Threats.** Malicious actors could combine the information in the SOC-3 report with other types of general system attacks to facilitate malicious activities such as data theft or sabotage.
4. **Information Disclosure.** An SOC-3 report will contain sensitive information about SHARE's security posture, confidentiality controls protecting sensitive information, and privacy practices.
5. **Legal Consequences.** If a compromised SOC-3 report causes a data breach or other security incidents, the state may face legal liability and possible regulatory consequences, depending on the data compromised.



Additionally, the FCD asserts that the publication of NMAC 2.2.2.10.S.2's SHARE SOC-3 audit report is at odds with the legislative intent and DFA's obligations under the Inspection of Public Records Act, specifically §14-2-1 (J), NMSA 1978. This statute clearly exempts from public inspection "information concerning information technology systems, the publication of which would reveal specific vulnerabilities that compromise or allow unlawful access to such systems." While the exemption does not outright ban requests for external audits of information technology systems, it does prevent the release of any segments that would disclose ongoing vulnerabilities that may compromise or enable unlawful access to such systems. As outlined above, given the nature of the SHARE system, a SOC-3 audit report is typically deemed unsuitable for systems like SHARE because SHARE's SOC-2 audit necessitates a comprehensive review of SHARE's internal controls, along with detailed testing results to confirm their adequacy. Consequently, any description or summary of SHARE's TSC internal controls will expose ongoing vulnerabilities that could compromise or facilitate unlawful access to SHARE.

Finally, there is no legal, federal, or statutory requirement to provide a SOC-3 audit report for SHARE. DFA strongly opposes this rule change and believes it would put confidential employee and vendor/supplier data at risk, in contradiction with § 14-2-1 (J). I ask that you consider striking the SOC-3 requirement and allowing the state to continue safeguarding employee and vendor data.

***The FCD proposes changes to the report due dates under NMAC 2.2.2.9.A.1.C.***

Under NMAC 2.2.2.9.A.1.C, the due date for DFA's agency audit is November 1st. FCD proposes changing the date for DFA-341 to November 15th for the following reason. DFA houses the Board of Finance's severance tax bond ("STB") Capital Outlay program, which provides funds for all legislatively approved STB capital outlay projects. Collecting and testing data and controls for such a wide-ranging program adds complexity and time to the completion of the DFA's agency audit. DFA must complete its audit by November 1st while relying on other state agencies to perform reconciliation and close out prior years' activities in a timely manner. If due dates continue to be extended for other state agencies, DFA recommends providing a corresponding extension for DFA's agency audit.

***The FCD proposes changes to the exit conference and related confidentiality issues under NMAC 2.2.2.10.M.3.***

Under NMAC 2.2.2.10.M.3, the agency and IPA are permitted to provide the Controller's Office with draft financial statements and notes, but they are prohibited from sharing the opinion and findings with the Controller's Office until released by OSA. The exclusion of the State Controller's Office from the initial opinion and findings can result in a delay in completing the State ACFR as required by § NMSA 1978, 6-5-4.1. Additionally, as the state's accounting oversight body, the Controller's Office "must have access to and authority to examine books, accounts, reports, voucher" to properly monitor and oversee state agencies and ensure compliance with state and federal law pursuant to § NMSA 1978, 6-5-2.1 (S). Please consider including DFA in the initial submission phase of an agency audit to encompass the opinion and findings.

***The State Controller's Office of the DFA proposes additional notice requirements to the Report Due Dates under NMAC 2.2.2.9.A.5.***

FCD suggests that the DFA be listed as an agency that must be notified when there are circumstances that will delay an agency's audit report. DFA is tasked with preparing the State's ACFR, which relies heavily on the timely submission of audits from state agencies. Delays in audits submitted by a state agency, entity, or component entity extend the time required to compile the ACFR accurately. Therefore, the Controller respectfully requests that DFA, similar to the state auditor, be informed of any situations that might cause an agency's audit report to be late, as long as the state entity is under the DFA's jurisdiction and reports within the ACFR.

Additionally, the Secretary of Finance and Administration is required to order monthly financial reporting by any entity that has not submitted its annual audit pursuant to § NMSA 1978, 9-6-5.2 (A). Requiring late notices to be sent to both OSA and DFA would ensure that DFA is able to effectively enforce this statutory obligation and assist OSA in ensuring compliance with reporting requirements.

For questions, email the Acting State Controller, Mark Melhoff at [marks.melhoff@dfa.nm.gov](mailto:marks.melhoff@dfa.nm.gov).



## Public Comment to Audit Rule

To: Bernadet Martinez (via email to [rulechange@osa.nm.gov](mailto:rulechange@osa.nm.gov))  
Office of the State Auditor  
2540 Camino Edward Ortiz, Suite A  
Santa Fe, New Mexico 87507

From: Robert Blumenfeld

Re: Public Comment to the NM Audit Rule

Date: April 28, 2025

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We are writing on behalf of three of New Mexico's leading housing authorities - the Albuquerque Housing Authority, Mesilla Valley Public Housing Authority, and Santa Fe Civic Housing Authority (collectively, the "*Housing Authorities*") - to provide public comment regarding the proposed amendments to the Audit Rule.

As background, the Housing Authorities have interests in separate entities that own and manage multifamily rental housing ("*Apartments*") that are financed utilizing low income housing tax credits ("*LIHTC*") and which provide affordable housing to low-income renters pursuant to the federal Housing Tax Credit ("*HTC*") program. For purposes of our comment, we refer to these separate entities that own Apartments as a "*TC Owner Entity*."

The current challenges and burdens are that the Office of State Audit ("*OSA*") is interpreting the Audit Rule to require each TC Owner Entity affiliated with a housing authority to provide a separate audit under the Audit Rule. Because each TC Owner Entity is already subjected to strict private sector annual audit requirements, the OSA's interpretation of the Audit Rule requires TC Owner Entities to undertake and complete annual audits that comply with both private sector standards and applicable public-sector standards required of public entities by the Audit Rule, such as GASBS. This unduly imposes costly and unnecessary red tape in the form of double audits, double costs, extra lost staff time, and lost opportunities to serve the residents of affordable housing apartments.

This comment is not merely to point out the challenges related to money, time, and effort that is required as a result of performing an effective double-layered public-private audit, but to add from our perspective that the requirement as currently interpreted by OSA does not yield materially better-quality information or substantially heightened audit detail for the



OSA or anyone else. Essentially, OSA is imposing a significantly burdensome cost of double audits on the TC Owner Entities with no public benefit in return.

**In view of this, the Housing Authorities respectfully request clarification be included in the new Audit Rule that a housing authority providing a housing authority audit subject to the Audit Rule be permitted to rely on a professional third-party independent audit of a TC Owner Entity that complies with investor and lender requirements alone, without requiring the housing authority's TC Owner Entity to undertake an audit that also complies with the Audit Rule.**

As further background for this request, the Audit Rule exists to examine the financial affairs of state agencies and public program funds. However, a TC Owner Entity is not a state agency and does not operate a federal housing program. Furthermore, a TC Owner Entity is subject to private obligations which require them to conduct professional third-party independent audits, on a different time schedule, and under private sector standards. Because a TC Owner Entity is not a governmental entity, does not operate any federal housing programs, and is audited annually by separate agreement, there is no reasonable purpose or valid justification to require a TC Owner Entity to comply with the Audit Rule for its own audit. The purpose of the Audit Rule is fulfilled, and the public is protected when the TC Owner Entity's affiliated housing authority performs its annual audit in compliance with the Audit Rule.

To be clear, a TC Owner Entity is a private, for-profit entity that owns an Apartment. A TC Owner Entity is organized and operates as a limited liability company or partnership with two owners. One of the owners is a tax credit investor, a private person or company that invests in the apartment. The tax credit investor typically owns 99.99% of the TC Owner Entity. The other owner, in the case of the Housing Authorities, is a private entity controlled by the Housing Authority, which typically owns 0.01% of the TC Owner Entity. It is clear therefore that a TC Owner Entity is not a governmental entity itself.

There is a misconception by the OAS that the TC Owner Entities affiliated with the Housing Authorities hold "federal assets" or themselves operate federal housing programs. This is incorrect. The TC Owners and Apartments they own and operate are not federal assets and the TC Owners are not directly operating any federal housing programs. The program administration is being handled by the Housing Authorities, who are subject to and meet the requirements of the Audit Rule. In simple terms, to the extent there are federal housing vouchers utilized at the Apartments, the dollars involved in the federal voucher program are subject to audit under the Audit Rule when the Housing Authorities are audited.



At a deeper level, there are two general types of LIHTC projects at issue here: (1) "Tax Credit Only" Projects and (2) "Repositioning" Projects.

Tax Credit Only Projects. The Housing Authorities are affiliated with affordable apartments that are, in many cases, financed with LIHTC but have no other federal or state subsidy attached to them. Informally, these properties are referred to as "Tax Credit Only" Projects. By way of illustration, Mesilla Valley Public Housing Authority ("MVPHA") has affiliates with interests in several Tax Credit Only apartments.

These projects are financed and operated on the same basis as unaffiliated<sup>1</sup> privately-owned tax credit projects in New Mexico. These types of properties were never operated as federal public housing, and they have no federal programs attached to in the past through the present day. There is simply no way to characterize these so-called "Tax Credit Only" projects as a federal asset or federal program.

Repositioning Projects. The Housing Authorities have other apartments that formerly served public housing residents pursuant to Section 9 of the Federal Housing Act ("Section 9"). Again, these Repositioning Programs are not federal assets and do not directly operate any federal housing programs.

The background of the federal repositioning is too complex to explain in detail in this letter. To summarize, due to challenges and weaknesses of Section 9 "public housing", HUD has a long-term policy encouraging housing authorities to find ways to "reposition" federal public housing units to a new ownership and subsidy model. HUD has created several tools, or mechanisms, to allow housing authorities to exit a property from the public housing program and convert the property into another type of affordable housing. The most common mechanism for repositioning is known as "RAD", which stands for the federal "Rental Assistance Demonstration" program.

In a "repositioning" transaction, HUD releases its deed of trust held on a housing authority's property (which has always been owned by the housing authority) to allow the housing authority to leverage private debt and tax credit equity to rehabilitate the apartments or rebuild the apartments as new construction. After the repositioning conversion, the property is now owned by a TC Owner Entity, a private-entity landlord that provides rental housing to low-income tenants who receive subsidies through the federal Section 8 program. The subsidies paid through the Section 8 program provide a stream of income to the landlord.

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<sup>1</sup> The term "unaffiliated" here refers to a privately owned apartment that has no direct or indirect connection with a housing authority.

This income is no different than any other private landlord who receives Section 8 income by agreeing to house a voucher holder at its property.

During this time, the Section 8 program is administered by the housing authority. This means that any federal funds flowing into the project first comes from the federal government to the local housing authority. The local housing authority staff then, in turn, ensure that the renters and landlords are meeting the requirements of the program. If so, the renters are allowed to remain as tenants, and the landlords collect a rental subsidy paid through the housing authority itself. At all times, the housing authority – and not the TC Owner Entity – is handling the direct funds from the federal government and the housing authority – and not the TC Owner Entity – is accounting for those dollars to ensure compliance with both federal and state law.

In connection with the Repositioning Model, the TC Owner Entity is a private landlord that agrees to rent its apartment's units to low-income residents who are participants in the Section 8 voucher program. The TC Owner does not operate the Section 8 program. Rather, the Housing Authority administers and operates the Section 8 Program (and the Housing Authority is audited subject to the Audit Rule) and pays the TC Owner Entity for those residents who have a subsidy on their unit.

In this scenario, the TC Owner Entity is no different than an unaffiliated private landlord that happens to accept Section 8 voucher holders as tenants. In both cases, the TC Owner Entity and the unaffiliated private landlord derive gross revenues through the housing authority that derive from the Section 8 program, but this is merely income to them. In this scenario, it is our understanding the Audit Rule does not apply to the unaffiliated private landlord. If the Audit Rule does not apply to such unaffiliated private landlords who receives Section 8 income from a voucher holder, there is no reason the same rule applies to the TC Owner Entities affiliated with the Housing Authorities.

We hope this letter explains the Housing Authorities position that the Audit Rule be clarified to exempt TC Owner Entities that are subject to annual private audits from the Audit Rule.

We are glad to provide more information and additional suggestions for this language at the upcoming hearings to consider the final form of the Audit Rule.

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SIGN-IN SHEET

PUBLIC RULE HEARING  
OFFICE OF STATE AUDITOR  
4/29/2025

PRINT NAME	SIGNATURE
Emily Wilson	Emily Wilson
Laura Buttram-Schmitz	Laura Buttram-Schmitz
Matt Bone	Matt Bone
Linda Bridge	Linda Bridge
Jennifer Koski	Jennifer Koski
Adam Montoya	Adam Montoya





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