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# New Mexico Register

The official publication for all official notices of rulemaking  
and filing of proposed, adopted and emergency rules.

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## **The New Mexico Register**

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# New Mexico Register

Volume XXX, Issue 5

March 12, 2019

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## Notices of Rulemaking and Proposed Rules

### CHILDREN, YOUTH AND FAMILIES DEPARTMENT PROTECTIVE SERVICES DIVISION

#### NOTICE OF PUBLIC HEARING

Protective Services Division (PSD) of the Children, Youth and Families Department (CYFD) will hold a public hearing in Santa Fe on Thursday, April 11, 2019, from 2:30 p.m. to 4:00 p.m. at the PERA Building, 1120 Paseo de Peralta, Santa Fe, NM Room #227, to take comments regarding the proposed changes to 8.26.4 NMAC, Licensing Requirements for Foster and Adoptive Homes.

Proposed changes are to establish federal licensing standards for applicants who wish to become foster care providers for children in PSD custody. Proposed changes will allow PSD to become in compliance with federal guidelines regarding licensing foster care providers.

A free electronic copy of the proposed changes can be found at <https://cyfd.org/for-providers/rfp>. A copy of the proposed changes may be reviewed between 8:00 a.m.-5:00 p.m. at the PSD Director's office, Room 254, in the PERA building in Santa Fe.

Written comments can be provided in person at the public hearing or via e-mail to Serra Dittel at [serra.dittel-payne@state.nm.us](mailto:serra.dittel-payne@state.nm.us) or by mail to CYFD, Serra Dittel, Protective Services Division, PO Drawer 5160, Santa Fe, NM 87502. All written comments must be received no later than 8:00 a.m. on Thursday, April 11, 2019. Written comments provided carry the same weight as comments received during the public hearings.

Subsection D of Section 9-2A-7 NMSA 1978 states "The secretary may make and adopt such reasonable and procedural rules and regulations

as may be necessary to carry out the duties of the department and its divisions" which provides the authority authorizing the proposed rule and the adoption of the proposed rule.

The PERA building is accessible to people with disabilities. Documents can be available in different formats to accommodate a particular disability upon request by calling 505-827-8400. If assistance is required to attend the hearing, please call 505-827-8400 to arrange accommodation.

### REGULATION AND LICENSING DEPARTMENT PHARMACY, BOARD OF

#### NOTICE OF REGULAR BOARD MEETING AND RULE HEARING

The New Mexico Board of Pharmacy will convene on April 18<sup>th</sup> & 19<sup>th</sup>, 2019 at 9:00 a.m. and continue until finished in the Board of Pharmacy Conference Room located at 5500 San Antonio Dr., NE, Albuquerque, NM 87109 for the purpose of conducting a regular board meeting.

The agenda is posted 72 hours prior to the scheduled meeting. You may view and download a copy of the agenda through the board's website: [www.rld.state.nm.us/boards/pharmacy.aspx](http://www.rld.state.nm.us/boards/pharmacy.aspx). All proposed language regarding rule hearings is linked on the *Agenda*, the *Notice to the Public* on our website and the *New Mexico Sunshine Portal*.

Individuals petitioning the board regarding requests/waivers and/or interested persons wishing to comment on proposed language regarding rule hearings must submit documentation for presentation; via fax (505) 222-9845, mail or email to the Executive Director, Cheranne McCracken, [Cheranne.McCracken@state.nm.us](mailto:Cheranne.McCracken@state.nm.us) at least five days in advance to the scheduled meeting, if in attendance must also provide

12 copies of that documentation for distribution to board members and staff, as public comment is allowed during the rule hearing. (*Board staff is not required to make copies.*)

The board may go into Executive Session to discuss items pursuant to Section 10-15-1H(1), Section 10-15-1H(2), Section 10-15-1H(3) or Section 10-15-1H(7) of the Open Meeting Act. Agenda items may be executed at any time during the meeting to accommodate hearings.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Debra Wilhite at 505-222-9835 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact Debra Wilhite, Administrative Secretary at 505-222-9835 or e-mail [debra.wilhite@state.nm.us](mailto:debra.wilhite@state.nm.us) if a summary or other type of accessible format is needed.

The Board will address:

All Board Matters:

Rule Hearings:  
16.19.7 NMAC – HOSPITAL PHARMACIES: Amendment to Sections 1, 7, 9, 11 and 16; administrative updates, board address; definition of bar code; sterile product citations; Section 16, section title change from obsolete "Application Of Regulation" to "Inpatient Hospital Pharmacy Limited Dispensing, Hospitalization Discharge". The purpose of this change is to allow an inpatient hospital pharmacy not otherwise licensed as a retail pharmacy to dispense medication to a patient on hospital discharge, in order to improve continuity of care by avoiding temporary disruption in medication therapy and to decrease

waste (as in the case of a partially used multi-dose container).  
STATUTORY AUTHORITY:  
Paragraph (6) of Section 61-11-6A  
NMSA 1978.

Executive Director’s Report:

Published in NM Register March 12,  
2019

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**End of Notices of  
Rulemaking and  
Proposed Rules**

## Adopted Rules

### Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico Register as provided in the State Rules Act. Unless a later date is otherwise provided by law, the effective date of the rule shall be the date of publication in the New Mexico Register. Section 14-4-5 NMSA 1978.

### OFFICE OF THE STATE AUDITOR

**This is an amendment to 2.2.2 NMAC, Sections 7, 8, 9, 10, 12, 15, and 16, effective 3/12/2019.**

#### 2.2.2.7 DEFINITIONS:

This Section describes certain terms used in 2.2.2 NMAC. When terminology differs from that used at a particular organization or under particular standards, auditors should use professional judgment to determine if there is an equivalent term:

- A. “AAG GAS”** means AICPA Audit and Accounting Guide – Government auditing standards and Single Audits (latest edition).
- B. “AAG SLV”** means AICPA Audit and Accounting Guide – State and Local Governments (latest edition).
- C. “Agency”** means any department, institution, board, bureau, court, commission, district or committee of the government of the state, including district courts, magistrate or metropolitan courts, district attorneys and charitable institutions for which appropriations are made by the legislature; any political subdivision of the state, created under either general or special act, that receives or expends public money from whatever source derived, including counties, county institutions, boards, bureaus or commissions; municipalities; drainage, conservancy, irrigation, or other special districts; and school districts; any entity or instrumentality of the state specifically provided for by law, including the New Mexico finance authority, the New Mexico mortgage finance authority, the New Mexico lottery authority and every office or officer of any entity

listed in Paragraphs (1) through (3) of Subsection A of Section 12-6-2 NMSA 1978.

**D. “Audit”** [~~means both~~] may refer to or include annual financial and compliance audit, special audit, attestation engagement, performance audit, forensic audit [and agreed upon procedures] or AUP, unless otherwise specified.

**E. “Auditor”** means independent public accountant.

**F. “AICPA”** means American institute of certified public accountants.

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

**H. “AUP”** means agreed upon procedures.

**I. “CPA”** means certified public accountant.

**J. “CPE”** means continuing professional education.

**K. “DFA”** means the New Mexico department of finance and administration.

**L. “ERB”** means the New Mexico education retirement board.

**M. “FCD”** means financial control division of the department of finance and administration.

**N. “FDIC”** means federal deposit insurance corporation.

**O. “FDS”** means financial data schedule.

**P. “GAAP”** means accounting principles generally accepted in the United States of America.

**Q. “GAGAS”** means the most recent revision of government auditing standards issued by the comptroller general of the United States (yellow book).

**R. “GAO”** means the government accountability office, a division of the OSA.

**S. “GASB”** means governmental accounting standards board.

**T. “GAAS”** means auditing standards generally accepted in the United States of America.

**U. “GSD”** means the New Mexico general services department.

**V. “GRT”** means gross receipts tax.

**W. “HED”** means the New Mexico higher education department.

**X. “HUD”** means United States (US) department of housing and urban development.

**Y. “IPA”** means independent public accountant.

**Z. “IRC”** means internal revenue code.

**AA. “LGD”** means the local government division of department of finance and administration (DFA).

**BB. “Local public body”** means a mutual domestic water consumers association, a land grant, an incorporated municipality or a special district.

**CC. “NCUSIF”** means national credit union shares insurance fund.

**DD. “NMAC”** means New Mexico administrative code.

**EE. “NMSA”** means New Mexico statutes annotated.

**FF. “Office” or “OSA”** means the New Mexico office of the state auditor.

**GG. “OMB”** means the United States office of management and budget.

**HH. “PED”** means the New Mexico public education department.

**II. “PERA”** means the New Mexico public employee retirement association.

**JJ. “PHA”** means public housing authority.



**KK.** “REAC” means real estate assessment center.

**LL.** “REC” means regional education cooperative.

**MM.** “Report” means a document issued as a result of an audit, attestation engagement, or AUP engagement regardless of whether the document is on the contractor’s letterhead or signed by the contractor.

~~MM.~~ **NN.** “RSI” means required supplementary information.

~~NN.~~ **OO.** “SAS” means the AICPA’s statement on auditing standards.

~~OO.~~ **PP.** “SHARE” means statewide human resources accounting and management reporting system.

~~PP.~~ **QQ.** “SI” means supplementary information.

~~QQ.~~ **RR.** “State auditor” may refer to either the elected state auditor of the state of New Mexico, or personnel of his office designated by him.

~~RR.~~ **SS.** “STO” means state treasurer’s office.

~~SS.~~ **TT.** “Tier” is established based on the amount of each local public body’s annual revenue, pursuant to Section 12-6-3 NMSA 1978 and Section 2.2.2.16 NMAC.

~~TT.~~ **UU.** “UFRS” means uniform financial reporting standards.

~~UU.~~ **VV.** “Uniform guidance” Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

~~VV.~~ **WW.** “U.S. GAO” means the United States government accountability office. [2.2.2.7 NMAC - Rp, 2.2.2.7 NMAC, 2/27/2018; A, 3/12/2019]

### 2.2.2.8 THE PROCUREMENT AND AUDIT PROCESS:

**A. Firm profiles:** For an IPA to be included on the state auditor’s list of approved firms, an IPA shall submit a firm profile online

annually on ~~January 5<sup>th</sup> or on the next~~ the first 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 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 Section 2.2.2.14 NMAC, continuing professional education requirements for all staff that the firm will use on any New Mexico governmental engagements;

(2) listed professional service contracts the firm entered into;

(3) for IPAs who have audited agencies under this rule in the past, they shall have previously complied with: Section 2.2.2.9 NMAC, Report Due Dates, including notifying the state auditor regarding late audit reports and Section 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 and ~~agreed upon procedures~~ AUP 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 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 shall be subject to an OSA quality control review of the IPA’s working papers. This review shall be conducted as soon as the documentation completion date,

as defined by AU-C Section 230, has passed (60 days after the report release date). The state auditor shall approve contracts 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 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.

**C. Disqualified firms:** An IPA firm shall not be included on the list of approved firms 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;

(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 Section 2.2.2.14 NMAC, to perform GAGAS audits;

(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 Section 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 Section 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 ~~[agreed upon procedures]~~ 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 his 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; or
- (o) 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 Section 2.2.2.8 NMAC.

(a) The state auditor or his 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 ~~[day the IPA receives]~~ 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 receipt]~~ 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 ~~[receiving the request]~~ 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 audit or [~~agreed-upon procedures~~] AUP engagement. Agencies are prohibited from beginning the process of procuring IPA services until they receive the OSA authorization. Agencies that wish to begin the IPA procurement process 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 audit 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 described in Subsection B of Section 2.2.2.16 NMAC. Agencies that receive and expend federal awards shall follow the uniform guidance procurement requirements from 2 CFR 200.317 to 200.326 and 200.509, and shall also incorporate applicable guidance from the following requirements. Agencies shall comply with the following procedures to obtain professional services from an IPA for an audit or [~~agreed-upon procedures~~] 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 [~~agreed-upon procedures~~] 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) The agency is encouraged to request multiple year proposals for audit and AUP services (not to exceed three years), however the term of the contract shall be for one year only. The parties shall enter a new audit contract each year. The agency is responsible for procuring IPA services in accordance with all applicable laws and regulations which may include, but are not limited to, the State Procurement Code (Chapter 13, Article 1 NMSA 1978) or equivalent home rule procurement provisions; GSD Rule, Section 1.4.1 NMAC, Procurement Code Regulations, if applicable; DFA Rule, Section 2.40.2 NMAC, Governing the Approval of Contracts for the Purchase of Professional Services; Uniform Guidance; and Section 13-1-191.1 NMSA 1978 relating to campaign contribution disclosure forms. In the event that either of the parties to the contract elects not to contract for all of the years contemplated by a multiple year proposal, or the state auditor disapproves the contract, the agency shall use the procedures

described above to procure services from a different IPA.

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

(5) 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:

- (a) responsiveness to the request for proposal (the firm's integrity, record of past performance, financial and technical resources);
- (b) relevant experience, availability of staff with professional qualifications and technical abilities;
- (c) results of the firm's peer and external quality control reviews; and
- (d) weighting the price criteria less than fifteen percent of the total criteria taken into consideration by the evaluation process or selection committee.

Upon the OSA's request, the agency

shall make accessible to the OSA all of the IPA procurement and selection documentation.

(6) After selecting an IPA, each agency shall enter the appropriate requested information online on the OSA-connect website ([www.osa-app.org](http://www.osa-app.org)). In order to do this, the agency shall register on OSA-Connect and obtain a user-specified password. The agency's user shall then use OSA-Connect to enter information necessary for the contract and for the OSA's evaluation of the IPA selection. After the agency enters the information, the OSA-Connect system generates a draft contract containing the information entered. The agency shall submit to the OSA for approval a copy of the unsigned draft contract by following the instructions on OSA-Connect. Note that the IPA recommendation form no longer exists as a separate document, because OSA-Connect gathers and delivers to the OSA the information historically submitted on the IPA recommendation form.

(7) 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, including DFA, for approval (if applicable). The OSA shall not physically sign the contract. After the agency obtains all the required signature and approvals of the contract, the agency shall submit an electronic portable document format (PDF) copy of the final signed contract to the OSA by electronic mail to: [reports@osa.state.nm.us](mailto:reports@osa.state.nm.us).

(8) The agency shall deliver the unsigned contract generated by OSA-Connect

to the OSA by the due date shown below. In the event that the due date falls on a weekend or holiday, the due date shall be the next business day. If the unsigned contract is not submitted to the state auditor by these due dates, the IPA may, according to professional judgment, include a finding of non-compliance with Subsection F of Section 2.2.2.8 NMAC in the audit report or [~~agreed-upon procedures~~] AUP report.

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

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

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

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

(e) local public bodies that qualify for the tiered system pursuant to Subsections A and B of Section 2.2.2.16 NMAC with a June 30 fiscal year end: [~~July~~] 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 with a fiscal year end other than June 30 shall use a due date 30 days before the end of the fiscal year; [~~and~~]

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

(i) Charter schools that are chartered by the PED and agencies that are subject to oversight by the HED have the

additional requirement of submitting their audit contract to PED or HED for approval (Section 12-6-14 NMSA 1978); and

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

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

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

(11) In selecting an IPA for an agency pursuant to Subsection F of Section 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 Section 2.2.2.8 NMAC, is ineligible to be selected under this paragraph;

(c)

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

(d)

the physical proximity of the IPA to the government agency to be audited;

(e)

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

(f)

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

(g)

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

(12) 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 agency is demonstrating progress in its own efforts to select an IPA;

(b)

whether the agency has funds to pay for the audit;

(c)

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

(d)

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

(e)

whether the agency has failed to

timely submit its e-mailed draft unsigned contract copy in accordance with the audit rule on one or more occasions;

(f)

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

(13) The state

auditor may appoint a committee of the state auditor's staff to make recommendations for the state auditor's final determination as to which IPAs shall be selected for each government agency subject to the discretion of the state auditor.

(14) 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 [~~agreed-upon-procedures~~] 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/disapproval of unsigned contract:** The state auditor shall use discretion and may not approve:

(1) An

unsigned audit contract, special audit contract, attestation engagement contract, performance audit contract, forensic audit contract or [~~an unsigned-agreed-upon-procedures~~] AUP professional services contract under Section 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:

(i)

the IPA is prohibited from conducting the agency audit or [~~agreed-upon-procedures~~] AUP engagement for a period of two years because the IPA already conducted those services for that agency for a period of six consecutive years;

(ii)

if firm A purchases the stock or assets of firm B, or if firm B merges into firm A with firm A being the surviving firm, firm A shall not be affected for purposes of the auditor rotation requirement; the auditor rotation clock shall continue to run without interruption for firm B's audit contracts, despite the fact that such audit contracts may be issued by firm A after the purchase or merger. Because of the impact of firm purchases and mergers on IPA independence the OSA may evaluate historical mergers when applying this section;

(c)

lack of competence or staff availability;

(d)

circumstances that may cause untimely delivery of the audit report or [~~agreed-upon-procedures~~] AUP report;

(e)

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



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

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

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

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

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

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

(2) [Audit contract] An audit contract, special audit contract, attestation engagement contract, performance audit contract, or forensic audit contract or [~~agreed-upon-procedures contracts~~] AUP contract of an IPA that has:

(a) breached a prior-year contract;

(b) failed to deliver an audit or [~~agreed-upon-procedures~~] 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 audit or an [~~agreed-upon-procedures~~] 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 audit contract, [~~or agreed-upon-procedures~~] 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 Section 2.2.2.14 NMAC;

(j) has a history of excessive errors or omissions in audit or [~~agreed-upon-procedures~~] AUP reports or working papers;

(k) released the audit report or [~~agreed-upon-procedures~~] AUP report to the agency, local public body or the public before the audit release letter or the OSA letter releasing the [~~agreed-upon-procedures~~] 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 Section 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, special audit contract, attestation engagement contract, performance audit contract, forensic audit contract

or [~~agreed-upon-procedures~~] 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 [~~agreed-upon-procedures~~] AUP to be performed by an IPA.

**H. Audit contract requirements:** The agency shall use the appropriate audit or [~~agreed-upon-procedures~~] AUP engagement contract form provided by the OSA through the OSA-connect website at www.osa-app.org. The OSA may provide audit or agreed-upon procedures engagement contract forms to the agency via facsimile or U.S. mail if specifically requested by the agency. Only contract forms provided by the state auditor shall be accepted and shall:

(1) be completed and submitted in its unsigned form by the due date indicated at Subsection F of Section 2.2.2.8 NMAC;

(2) for all agencies whose contracts are approved through the DFA's contracts review bureau, have the IPA's combined reporting system (CRS) number verified by the taxation and revenue department (TRD) after approval by the state auditor; and

(3) in the compensation section of the contract, include the dollar amount that applies to each element of the contracted procedures that shall be performed;

(4) if the agency requires the IPA to provide additional services outside the scope of work described in the [~~standard~~] audit or [~~agreed-upon-procedures~~] AUP contract form provided through the OSA-connect website, the additional services shall be described in detail in the "other provisions section" of the contract; if the additional services required by the "other provisions" section of the contract cause a significant change in the scope of the audit, then the contract amendment provisions of Subsection N of Section 2.2.2.8 NMAC shall apply.

**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 [~~agreed upon procedures~~] 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 3.76 shall submit with the firm profile, a completed contingency subcontractor form that is dated to be effective until the date the next firm profile shall be submitted. The form shall indicate which IPA on the state auditor's current list of approved IPA's shall complete the IPA's audits in the event the one individual with the qualifications described above becomes incapacitated and unable to complete the audit. See the related contingency subcontractor form available at [www.osanm.org](http://www.osanm.org). The OSA shall not approve audit contracts for such a firm without the required contingency subcontractor form.

(2) In the event an IPA chooses to use a subcontractor to assist the IPA in working on a specific audit, then the IPA shall obtain the prior written approval of the state auditor to subcontract a portion of the audit work. The IPA may subcontract

only with IPAs who have submitted a completed and approved firm profile to the state auditor as required in Subsection A of Section 2.2.2.8 NMAC. Subcontractors are subject to an independence analysis, which may include the IPA rotation requirements of Subsection G of Section 2.2.2.8 NMAC. "Technical review contracts" are considered subcontracting and are subject to the requirements of this [section] 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 *government auditing standards*, December 2011 revision, issued by the US-GAO (GAGAS 3.02-3.59).

(1) An IPA who performs the agency's annual financial audit shall not enter into any special audit or non-audit service contract with the respective agency without the prior written approval of the state auditor. The exception to this requirement is an engagement that costs one thousand dollars (\$1,000) and less (exclusive of gross receipts tax) for client assistance with responses to IRS and other regulators. Requests for approval of professional service contracts shall be submitted to the OSA with the signed agreement. The OSA shall review the requests and respond to the agency and the IPA within 30 calendar days of receipt. The following documentation shall be submitted to the OSA for review and approval.

(a) The professional services contract shall be submitted to the state auditor for review and approval after it has been signed by the agency and the IPA. The contract shall include the contract fee, start and completion date, and the specific scope of services to be performed by the IPA.

(b) For non-audit services, include the auditor's documentation of:

(i) whether management has the ability to effectively oversee the non-audit service pursuant to GAGAS 3.34;

(ii) the documented assurance from the entity that management shall assume all management responsibilities, oversee the services by designating an individual, preferably within senior management, who possesses suitable skill, knowledge, or experience; evaluate the adequacy and results of the services performed; and accept responsibility for the results of the services pursuant to GAGAS 3.37;

(iii) the auditor's establishment and documentation (engagement letter) of the auditor's understanding with the entity's management or those charged with governance of the objectives of the non-audit services, the services to be performed, audited entity's acceptance of its responsibilities, the auditor's responsibilities, and any limitations of the non-audit service, pursuant to GAGAS 3.39; and

(iv) the auditor's consideration of significant threats (if applicable) to independence that have been eliminated or reduced to an acceptable level through the application of additional safeguards, and a description of those safeguards.

(c) Upon completion of the non-audit services, the IPA shall provide the state auditor with a copy of any report submitted to the agency. Such reports are not subject to OSA review and release procedures unless Section 2.2.2.15 NMAC requires such review and release procedures. Additionally, the OSA has the authority to notify the agency, IPA or contractor that the report is subject to review and release procedures.

(2) An IPA may not enter into any type of fraud-related engagement (this includes waste and abuse related engagements) with a New Mexico governmental agency without first obtaining the prior written approval of the state auditor. This requirement applies both when the IPA is the annual

auditor approved by OSA and when the IPA is not the agency's annual auditor. See Section 2.2.2.15 NMAC for the requirements to submit such reports to the OSA for review and release. If the proposed engagement is not related to fraud, waste or abuse and is therefore not subject to Section 2.2.2.15 NMAC, then prior written approval by the state auditor is not required when the IPA is not the agency's annual auditor. However, a copy of the contract that is unrelated to fraud and a copy of any report resulting from such a contract shall be submitted to the OSA when requested by the OSA.

(3) The state auditor shall not approve any contract for an agency's annual auditor to perform non-audit services that are management responsibilities as provided in GAGAS 3.36. Nor shall the state auditor approve any contract for an agency's annual auditor to perform services that always impair the auditor's independence pursuant to GAGAS 3.50, 3.53, 3.54, 3.56, 3.57, and 3.58.

#### **M. Progress**

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

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

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

(3) Progress payments up to seventy percent do not require state auditor approval provided that the agency certifies the receipt of services before any payments are made to the IPA. 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 of seventy percent to ninety-five percent 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 Section 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 stated in the letter accompanying 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, [~~agreed upon procedures~~] AUP services, or non-audit services may 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. Any amendments to contracts shall be made on the contract amendment form available at [www.saonm.org](http://www.saonm.org). The OSA's review of audit contracts and amendments does not include evaluation of compliance with the state procurement code or other applicable requirements. Although the parties may amend the delivery dates in a contract, audit report regulatory due dates cannot be modified by amendment. The OSA's review of audit contract amendments does not include evaluation of compliance with any state or local procurement laws or regulations; each agency is responsible for its own compliance with applicable procurement laws, regulations or policies.

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

(a) the work to be performed and the estimated hours and fees required for completion of each separate professional service contemplated by the amendment; and

(b) how the work to be performed relates to the scope of work outlined in the original contract.

(3) Since annual financial audit contracts are fixed-price contracts, contract amendments for fee increases shall only be approved for extraordinary circumstances, reasons determined by the state auditor to be in the best interest of the state of New Mexico,



or a significant change in the scope of an audit. For example, if an audit contract did not include a federal single audit, a contract amendment shall be approved if a single audit is required. Other examples of significant changes in the scope of an audit include: the addition of a new program, function or individual fund that is material to the government-wide financial statements; the addition of a component unit; and the addition of special procedures required by this rule, a regulatory body or a local, state or federal grantor. Contract amendments shall not be approved to perform additional procedures to achieve an unmodified opinion. The state auditor shall also consider the auditor independence requirements of Subsection L of Section 2.2.2.8 NMAC when reviewing contract amendments for approval. Requests for contract amendments shall be submitted to the OSA with the signed contract amendment. The OSA shall review the requests and respond to the agency and the IPA within 30 calendar days of receipt.

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

**O. Termination of audit contract requirements:**

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

(2) If the agency or IPA terminate the audit or [~~agreed upon procedures~~] 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 Section 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 Section 2.2.2.9 NMAC or Subsection G of Section 2.2.2.16 NMAC. [2.2.2.8 NMAC - Rp, 2.2.2.8 NMAC 2/27/2018; A, 3/12/2019]

**2.2.2.9 REPORT DUE DATES:**

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

(1) The audit report due dates are as follows:

(a) regional education cooperatives, cooperative educational services and independent housing authorities: September 30;

(b) hospitals and special hospital districts: October 15;

(c) higher education, state agencies not specifically named elsewhere in this

Subsection , district courts, district attorneys, the New Mexico finance authority, the New Mexico lottery authority, and other agencies with June 30 fiscal year-ends that are reported as component units in the state of New Mexico comprehensive annual financial report: November 1;

(d) school districts and the state of New Mexico component appropriation funds (state general fund): November 15;

(e) the PED, the state investment council, and the three post-employment benefit agencies (PERA, ERB and the retiree health care authority): the Wednesday before Thanksgiving day;

(f) counties, incorporated counties (of which Los Alamos is the only one), workforce investment boards, councils of governments, and the New Mexico mortgage finance authority: December 1;

(g) local public bodies including municipalities: December 15;

(h) the state of New Mexico comprehensive annual financial report (CAFR): December 31;

(i) the ERB, PERA and retiree health care authority schedules of employer allocations reports and related employer guides required by Subsections Z and DD of Section 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 31<sup>st</sup> for any reason (bonding, GFOA, etc.): the earlier of its agency due date or December 1; and

(m) late audit or [~~agreed upon procedures~~] 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 Section 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 organized bound hard copy of the report shall be submitted for review by the OSA with the following: copy of the signed management representation letter and a copy of the completed state auditor report review guide (available at [www.saonm.org](http://www.saonm.org)). A report shall not be considered submitted to the OSA for the purpose of meeting the due date until a copy of the signed management representation letter and the completed report review guide are also submitted to the OSA. All separate reports prepared for component units shall also be submitted to the OSA for review, along with a copy of the management representation letter, and a completed report review guide for each separate audit report. A separate component unit report shall not be considered submitted to the OSA for the purpose of meeting the due date until a copy of the signed management representation letter and the completed report review guide are also submitted to the OSA. If a due date falls on a weekend or holiday, or if the OSA is closed due to inclement weather, the audit report is due the following business day by 5:00 p.m. 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.

(4) AU-C 700.41 requires the auditor's report to be dated after audit evidence supporting the opinion has been obtained and reviewed, the financial statements have been prepared and the management representation letter has been signed. AU-C 580.20 requires the management representation letter to be dated the same date as the independent auditor's report.

(5) As soon as the auditor becomes aware that circumstances exist that will make an agency's audit report be submitted after the applicable due date provided in Subsection A of Section 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. A copy of the letter shall be sent to the legislative finance committee and any applicable oversight agency: PED, FCD, LGD, or HED. There shall be a separate notification for each late audit report. The notification shall include a specific explanation regarding why the report will be late, when the IPA expects to submit the report and a concurring signature by a duly authorized representative of the agency. If the IPA is going to miss the expected report submission date, then the IPA shall send a revised notification letter. In the event the contract was signed after the report due date, the notification letter shall still be submitted to the OSA explaining the reason the audit report will be submitted after the report due date. The late report notification letter is not required if the report was submitted to the OSA for review by the due date, and then rejected by the OSA, making the report late when resubmitted. Reports resubmitted to the OSA with changes of the IPA's opinion after the report due date shall

be considered late and a late audit finding shall be included in the audit report.

**B. Delivery and release of the audit report:**

(1) All audit reports (and all separate reports of component units, if applicable) shall be organized, bound and paginated. The OSA does not accept facsimile or e-mailed versions of the audit reports for initial review. The IPA shall deliver to the state auditor a hard copy of the audit report for review by 5:00 p.m. on the day the report is due. Reports postmarked by the due date shall be considered received by the due date. 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 Section 2.2.2.13 NMAC. When the OSA rejects and returns a substandard audit report to the IPA, the OSA shall consider the audit report late if the corrected report is not resubmitted by the due date. The IPA shall also report a finding for the late audit report in the audit report. The firm shall submit an electronic version of the corrected rejected report for OSA review. The name of the electronic file shall be "corrected rejected report" followed by the agency name and fiscal year.

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

(3) IPAs are encouraged to deliver completed audit reports before the due date.

The OSA shall review all audit reports submitted by the report due date before reviewing reports that are submitted after the report due date. Once the review of the report is completed pursuant to Subsection A of Section 2.2.2.13 NMAC, and any OSA comments have been addressed by the IPA, the OSA shall indicate to the IPA that the report is ready to print. After the OSA issues the “ok to print” communication for the audit report, the OSA shall authorize the IPA to submit the corrected report with the following items to the OSA within five business days; an electronic searchable version of the audit report labeled “final”, in PDF format, an electronic excel version of the summary of findings report, an electronic excel version of the vendor schedule, an electronic excel version of the completed fund balance form, an electronic excel version of the GASBS 77 disclosure template, if applicable, an electronic excel version of the indigent care schedules for hospitals, if applicable, and an electronic excel version of the schedule of asset management costs for investing agencies, if applicable (all available at www.saonm.org). The OSA shall not release the report until the searchable electronic PDF version of the report and all required electronic excel schedules are received by the OSA. The electronic file containing the final audit report shall:

- (a) be created and saved as a PDF document in a single PDF file format (simply naming the file using a PDF extension .pdf does not by itself create a PDF file);
- (b) be version 5.0 or newer;
- (c) not exceed 10 megabytes (MB) per file submitted (contact the OSA to request an exception if necessary);
- (d) have all security settings like self-sign security, user passwords, or permissions removed or deactivated so the OSA is not prevented from opening, viewing, or printing the file;

- (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 “final version,” followed by the name of the agency and the fiscal year; 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”. 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. The agency or the IPA shall ensure that every member of the agency’s governing authority receives a copy of the audit report.
- (5) After the release of a report, the OSA shall provide DFA and the legislative finance committee with notification that the report is available on the OSA website.
- (6) If an audit report is reissued pursuant to AU-C 560, subsequent events and subsequently discovered facts, or AAG GAS 13.29-.30 for uniform guidance compliance reports, the reissued audit report shall be submitted to the OSA with a cover

letter addressed to the state auditor. The cover letter shall explain that:

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

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

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

**C. Required status reports:** For an agency that has



failed to submit audit or agreed-upon procedures reports as required by this rule, and has therefore been designated as “at risk” due to late reports, the state auditor requires the agency to submit written status reports to the OSA on each March 15, June 15, September 15, and December 15 that the agency is not in compliance with this rule. Status reports are not required for agencies that are included on the “at risk” list solely due to an adverse or disclaimed independent auditor’s opinion. The status report shall be signed by a member of the agency’s governing authority, a designee of the governing authority or a member of the agency’s top management. If the agency has a contract with an IPA to conduct the audit or perform the ~~[agreed-upon procedures]~~ AUP engagement, the agency must send the IPA a copy of the quarterly status report. IPAs engaged to audit or perform ~~[agreed-upon procedures]~~ AUP engagements for agencies with late reports are responsible for assisting these agencies in complying with the reporting requirements of this section. Failure to do so shall be noted by the OSA and taken in to account during the IPA Firm Profile evaluation process. At a minimum, the quarterly written status report shall include:

- (1) a detailed explanation of the agency’s efforts to complete and submit its audit or agreed-upon procedures;
  - (2) the current status of any ongoing audit or agreed-upon procedures work;
  - (3) any obstacles encountered by the agency in completing its audit or agreed-upon procedures; and
  - (4) a projected completion date for the financial audit or agreed-upon procedures report.
- [2.2.2.9 NMAC - Rp, 2 2.2.9 NMAC, 2/27/2018; A, 3/12/2019]

**2.2.2.10 GENERAL CRITERIA:**

**A. Scope of annual financial audit:**

- (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.

**(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. 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 unless otherwise approved by the state auditor. An exemption shall be requested by the primary government, in writing, from the state auditor in order to present a component unit as other than a discrete component unit. The request for an exemption shall include a detailed explanation, conclusion and supporting documentation justifying the request for blended component unit presentation. Documentation of the state auditor’s approval of the blended component unit presentation shall accompany the bound hard copy of the report submitted to OSA for review. Component units are reported using the government financial reporting format if they have one or more of the characteristics described at AAG SLV 1.01. If a component unit does not qualify to be reported using the governmental format, 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. However, if the primary government is a state agency, department, board, public institution of higher education, public post-secondary educational institution, county, municipality or public school district, Section 6-5A-1 NMSA 1978 requires all 501(c)3 component unit organizations with a gross annual income in excess of two hundred fifty thousand dollars [~~(250,000)~~] (\$250,000) to be audited annually. This statutory requirement does not set a universal materiality threshold for purposes of the performing audits subject to this rule.

**(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 CAFR). 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;	(a) The level of planning materiality described at AAG SLV 4.72-4.73 and exhibit 4-1 shall be used. Planning materiality for component units is at the individual component unit level.	(ii) RSI data required by GASBS 67 and 68 for defined benefit pension plans;
(v) the OSA standard contract form shall be used by both the primary government and the component unit;	(b) The scope of the audit includes the following statements and disclosures which the auditor shall audit and give an opinion on. The basic financial statements (as defined by GASB and displayed in AAG SLV exhibit 4-1) consisting of:	(iii) RSI schedules required by GASBS 43 and 74 for postemployment benefit plans other than pension plans;
(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;	(i) the governmental activities, the business-type activities, and the aggregate discretely presented component units;	(iv) RSI schedules required by GASBS 45 and 75 regarding employer accounting and financial reporting for postemployment benefits other than pensions; and
(vii) all component unit findings shall be disclosed in the primary government's audit report (except the statewide CAFR which shall include only component unit findings that are significant to the state as a whole); and	(ii) each major fund and the aggregate remaining fund information;	(v) infrastructure modified approach schedules derived from asset management systems (GASBS 34.132-133).
(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 Section 2.2.2.9 NMAC for the review process described in Subsection A of Section 2.2.2.13 NMAC.	(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	(e) The audit engagement and audit contract compensation include an AU-C 725 opinion on the SI schedules presented in the audit report. The auditor shall subject the information on the SI schedules to the procedures required by AU-C 725. The auditor shall report on the remaining SI in an other-matter paragraph following the opinion paragraph in the auditor's report on the financial statements pursuant to AU-C 725. With the exception of the statewide CAFR, the following SI schedules are required to be included in the AU-C 725 opinion if the schedules are applicable to the agency:
(d) With the exception of the statewide CAFR, the following SI pertaining to component units for which separately issued financial statements are not available shall be audited and opined on as illustrated in AAG SLV 16.103 example A-15: financial statements for each of the component unit's major funds, combining and individual fund financial statements for all of the component unit's non-major funds, and budgetary comparison statements for the component unit's general fund and major special revenue funds that have legally adopted annual budgets (AAG SLV 3.22).	(iv) the related notes to the financial statements.	(i) primary government combining and individual fund financial statements for all non-major funds (GASBS 34.383);
(2) Audits of agencies shall be comprised of a financial and compliance audit of the financial statements and schedules as follows:	(e) 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.	(ii) the schedule of expenditures of federal awards required by uniform guidance;
	(d) The auditor shall apply procedures and report in the auditor's report on the following RSI (if applicable) pursuant to AU-C 730:	(iii) the schedule of pledged collateral required by Subsection P of Section 2.2.2.10 NMAC;
	(i) management's discussion and analysis (GASBS 34.8-.11);	(iv) the schedule of changes in assets and liabilities for agency funds required by Subsection X of Section 2.2.2.10 NMAC;

(v) the financial data schedule (FDS) of housing authorities pursuant to Subsection B of 2.2.2.12 NMAC;

(vi) 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;

(vii) the indigent care schedules for hospitals pursuant to Subsection F of 2.2.2.12 NMAC; and

(viii) any other SI schedule required by this rule.

(f) The agency shall prepare a schedule of vendors using the form and instructions available on [www.saonm.org](http://www.saonm.org), for *procurements* exceeding sixty thousand dollars (\$60,000) (excluding gross receipts tax) that occurred during the audited fiscal year [that includes the following information: request for bid or request for proposal number; type of procurement, for example, request for proposal (RFP), sole source, etc.; the names and physical addresses of all vendors that responded to requests for bids or requests for proposals during the fiscal year; whether each vendor received the award; dollar amount of the awarded contract; dollar amount of any contract amendment during the fiscal year that caused a previously awarded contract to exceed sixty thousand dollars (\$60,000) (excluding gross receipts tax); whether each responding vendor was an in-state vendor or an out-of-state vendor (based on the statutory definition); if the vendor was in-state and chose the veterans' preference instead of the in-state preference (this is n/a for federal funds); and a short description of the scope of work. The schedule shall include all contracts totaling over sixty thousand dollars (\$60,000) (excluding gross receipts tax) regardless of whether related

expenditures exceeded sixty thousand dollars (\$60,000) during the fiscal year and regardless of procurement method. Exclude information on a multi-year procurement that occurred in a prior year unless there was a contract amendment during the current fiscal year that caused the previously existing contract to exceed sixty thousand dollars (\$60,000) for the first time. Exclude procurements that agencies performed based on statewide pricing agreements obtained by general services department (GSD) or cooperative educational services from the schedule. However, agencies like GSD and cooperative educational services that perform procurement services for other agencies that result in price agreements shall disclose all their procurements in their vendor schedules in their own audit reports, including procurements that resulted in price agreements. The IPA shall submit an electronic excel version of the vendor schedule using the form provided by the OSA with the final PDF version of the audit report as required by Subsection B of Section 2.2.2.9 NMAC. The GAO may aggregate, analyze and publish vendor schedule information].

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

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

(6) 2.2.2 NMAC, requirements for contracting and conducting audits of agencies, latest edition.

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

**D. Requirements for preparation of financial statements:**

- (1) The financial statements presented in audit reports shall be prepared from the agency's books of record and contain amounts rounded to the nearest dollar.
- (2) The financial statements are the responsibility of the agency. The agency shall maintain adequate accounting records, prepare financial statements in accordance with accounting principles generally accepted in the United States of America, and provide complete, accurate, and timely information to the IPA as requested to meet the audit report due date imposed in Subsection A of Section 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 for management's review and approval, including documenting independence safeguards as required by GAGAS 3.59, the fact that the auditor prepared the financial statements shall be disclosed on the exit conference page of the audit report. If the IPA prepared the financial statements, the auditor shall determine whether an audit finding shall be reported in accordance with AU-C 265.

**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. The state auditor shall have access to the audit documentation at the discretion of the state auditor.

(2) When requested by the state auditor, all of the audit documentation shall be delivered to the state auditor by the due date indicated in the request.

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

(a) the state auditor may require the

predecessor IPA firm to correct its working papers and reissue the audit report to the agency, federal oversight or cognizant agency and any others receiving copies;

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

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

**F. Auditor communication requirements:**

(1) The IPA shall comply with the requirements for auditor communication with those charged with governance as set forth in AU-C 260 and GAGAS 4.03 and 4.04.

(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 Section 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 Section 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. 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 or his 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 4.33. 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 Section 2.2.2.12 NMAC and the department of finance and administration (DFA) white papers “calculating reversions to the state general fund,” and “basis of accounting-modified accrual and the budgetary basis.” The statewide CAFR 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 [suggests] 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 may relate to any topic relevant to 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 action, if any, in the form of additional disclosure, 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 respond to all aspects of the referral and list any findings associated with the subject matter of the referral. IPAs shall retain adequate documentation in the audit workpapers to support the written confirmation to OSA that the IPA took appropriate action in response to the referral. As outlined in Section 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 Section 2.2.2.8 NMAC, an [IPAs] IPA may be placed on restriction if an IPA refuses to comply with OSA referrals in a timely manner.

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

#### I. State auditor

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

#### J. State compliance

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

##### (1)

Procurement Code, Sections 13-1-1 to 13-1-199 NMSA 1978 including providing the state purchasing agent with the name of the agency’s chief procurement officer, pursuant to Section 13-1-95.2 NMSA 1978, and Procurement Code Regulations, Section 1.4.1 NMAC, or home rule equivalent.

##### (2) Per Diem

and Mileage Act, Sections 10-8-1 to

10-8-8 NMSA 1978, and Regulations Governing the Per Diem and Mileage Act, Section 2.42.2 NMAC.

**(3) Public**

Money Act, Sections 6-10-1 to 6-10-63 NMSA 1978, including the requirements that county and municipal treasurers deposit money in their respective counties, and that the agency receive a joint safe keeping receipt for pledged collateral.

**(4) Public**

School Finance Act, Sections 22-8-1 to 22-8-48 NMSA 1978.

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

**(6) Public**

Employees Retirement Act, Sections 10-11-1 to 10-11-142 NMSA 1978. IPAs shall test to ensure one hundred percent of payroll is reported to PERA. PERA membership is mandatory, unless membership is specifically excluded pursuant to Subsection B of Section 10-11-3 NMSA 1978.

**(7)**

Educational Retirement Act, Sections 22-11-1 to 22-11-55 NMSA 1978.

**(8) Sale of**

Public Property Act, Sections 13-6-1 to 13-6-8 NMSA 1978.

**(9) Anti-**

Donation Clause, Article IX, Section 14, New Mexico Constitution.

**(10) Special,**

Deficiency, and Supplemental Appropriations (appropriation laws applicable for the year under audit).

**(11) State**

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

**(12) Lease**

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

**(13)**

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

**(14)**

Requirements for contracting and conducting audits of agencies, Section 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 one hundred percent of payroll is reported to NMRHCA. NMRHCA employer and employee contributions are set forth in Section 10-7C-15 NMSA 1978.

**(18)**

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

**(19) School**

Personnel Act, Sections 22-10A-1 to 22-10A-39 NMSA 1978.

**(20) School**

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

**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)**

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;

**(4) catalog of**

federal domestic assistance (CFDA), latest edition; and

**(5) internal**

revenue service (IRS) employee income tax requirements. IRS Publication 15-B, employer's tax

guide to fringe benefits, available online, provides detailed information regarding the taxability of fringe benefits.

**L. Audit finding**

**requirements:**

**(1)**

Communicating findings: IPAs shall communicate findings in accordance with generally accepted auditing standards and the requirements of GAGAS 4.23. 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. [2013] 2018-001, [2013] 2018-002 ... [2013] 2018-999). All prior year findings shall include all finding numbers used under historical numbering systems in brackets, following the current year finding reference number, 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 ["findings that do not rise to the level of a significant deficiency."], "other matters."

**(a)**

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

**(b)**

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

(c) Section 12-6-5\_NMSA 1978 requires that “each report set out in detail, in a separate section, any violation of law or good accounting practices found by the audit or examination.” When auditors detect violations 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. 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 [13-48] 13.49 there is no requirement for such findings to be included or referenced in the uniform guidance compliance report.

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

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

(ii) criteria (identifies the required or desired state or what is expected from the program or operation; cites the

specific section of law, regulation, ordinance, contract, or grant agreement if applicable);

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

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

(v) recommendation addressing each condition and cause; and

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

(e) Uniform guidance regarding single audit findings (uniform guidance 200.511): The auditee is responsible for follow-up and corrective action on all audit findings. As a part of this responsibility, the auditee shall prepare a summary schedule of prior audit findings and a corrective action plan for current year audit findings in accordance with the requirements of uniform guidance 200.511. The corrective action plan and summary schedule of prior audit findings shall include findings relating to the financial statements which shall be reported in accordance with GAGAS. The summary schedule of prior year findings and the corrective action plan shall be included in the reporting package submitted to the federal audit clearinghouse (AAG GAS [13-48] 13.49 fn 38). In addition to being included in the agency response to each audit finding, the corrective action plan shall be provided on the audited agency’s letterhead in a

document separate from the auditor’s findings. (COFAR frequently asked questions on the office of management and budget’s uniform administrative requirements, cost principles, and audit requirements for federal awards at 2 CFR 200, Section 511-1).

(f) All audit reports shall include a summary of audit results preceding the presentation of audit findings (if any). The summary of audit results shall include the type of auditor report issued and whether the following categories of findings for internal control over financial reporting were identified: material weakness, significant deficiency, and material noncompliance.

(2) Prior year findings:

(a) IPAs shall comply with the requirements of GAGAS Section 4.05 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.

(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 [13.51] 13.53).

(3) Current-year audit findings: Written audit findings shall be prepared and submitted to management of the agency as soon as the IPA becomes aware of the findings so the agency has time to respond to the findings prior to the exit conference. The agency shall prepare "planned corrective actions" as required by GAGAS 4.33. 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 4.38). Pursuant to GAGAS 4.39, "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 entity. In such cases, the auditors should indicate in the report that the audited entity 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 Section 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 the IPA who performs the agency's annual financial audit, or the scope of work on any professional services contract 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 Subsection L of Section 2.2.2.8 NMAC.

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

(7) Component unit audit findings shall be reported in the primary government's financial audit report. This is not required for the statewide CAFR 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 Section 2.2.2.12 NMAC, release of any portion of the audit report by the IPA or agency prior to being officially released by the state auditor is a violation of Section 12-6-5 NMSA 1978 and requires a compliance finding in the audit report.

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

**M. Exit conference and related confidentiality issues:**

(1) The IPA shall hold an exit conference with representatives of the agency's governing authority and top management including 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, any progress meetings and the exit conference. If such notification is received, the IPA and agency shall invite the state auditor or his designee 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. [~~Unless the cost of the audit is five thousand dollars (\$5,000) or less (excluding GRT), the exit conference shall be held in person; a telephone or webcam exit conference shall not meet this requirement.~~] If extraordinary circumstances exist that prevent the exit conference from taking place in person, the IPA shall submit a written request for an exemption from this requirement to the state auditor at least seven days prior to the scheduled exit conference. The written request for the exemption shall include the justification for the request and the concurring signature of the agency. The IPA may not hold a telephonic or webcam exit conference without prior written approval of the state auditor [~~if the cost of the audit is greater than five thousand dollars (\$5,000)~~]. 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.

(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, the audit report shall be presented by the IPA, to a quorum of

the governing authority of the agency at a meeting held in accordance with the Open Meetings Act, if applicable. This requirement only applies to agencies with a governing authority, such as a board of directors, board of county commissioners, or city council, which is subject to the Open Meetings Act. The IPA shall ensure that the required communications to those charged with governance are made in accordance with AU-C 260.12 to 260.14.

(5) At all times during the audit and after the audit report becomes a public record, the IPA shall follow applicable standards and Section 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 4.30-32 and GAGAS 4.40-44.

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

(1) IPAs shall comply with the requirements of GAGAS 4.06-.09 relating to fraud, noncompliance with provisions of laws, regulations, contracts and grant agreements, 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 or IPA shall notify the state auditor immediately, in writing, upon discovery of any

violation of a criminal statute in connection with financial affairs. The notification shall include an estimate of the dollar amount involved and a complete description of the violation, including names of persons involved and any action taken or planned. The state auditor may cause the financial affairs and transactions of the agency to be audited in whole or in part pursuant to Section 12-6-3 NMSA 1978 and Section 2.2.2.15 NMAC. If the state auditor does not designate an agency for audit, an agency shall follow the provisions of Section 2.2.2.15 NMAC when entering into a professional services contract for a special audit, performance audit or attestation engagement regarding the financial affairs and transactions of the agency relating to financial fraud, waste and abuse.

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

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

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

(2) If the agency has investments in securities

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

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

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

(b) account name;

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

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

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

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

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

(f) for state agencies only, statewide human resources accounting and management reporting system (SHARE) fund number. In auditing the balance of a state agency's

investment in the SGFIP, the IPA shall review the individual state agency's cash reconciliation procedures and determine whether those procedures would reduce the agency's risk of misstatement in the investment in SGFIP, and whether the agency is actually performing those procedures. The IPA shall also take into consideration the complexity of the types of cash transactions that the state agency enters into and whether the agency processes its deposits and payments through SHARE. The IPA shall use professional judgment to determine each state agency's risk of misstatement in the investment in the SGFIP and write findings and modify opinions as deemed appropriate by the IPA. The state auditor requires the IPAs auditing cash of state agencies to obtain a confirmation of cash at the individual agency level from STO.

(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 [supplementary] SI schedule or note to the financial statements that discloses the collateral pledged by each depository for public funds. The SI schedule or note shall disclose the type of security (i.e., bond, note, treasury, bill, etc.), security number, committee on uniform security identification procedures (CUSIP) number, fair market value and maturity date.

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

requirements shall be calculated separately for each bank and disclosed in the notes.

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

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

(e) Per [~~Section 6-10-16.A~~] Subsection A of Section 6-10-16 NMSA 1978, "deposits of public money shall be secured by: securities of the United States, its agencies or instrumentalities; securities of the state of New Mexico, its agencies, instrumentalities, counties, municipalities or other subdivisions; securities, including student loans, that are guaranteed by the United States or the state of New Mexico; revenue bonds that are underwritten by a member of the financial industry regulatory authority (known as FINRA), and are rated "BAA" or

above by a nationally recognized bond rating service; or letters of credit issued by a federal home loan bank."

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

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

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

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

**Q. Budgetary presentation:**

(1) Prior year balance included in budget:

(a)

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

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

(2) The differences between the budgetary basis and GAAP basis revenues and expenditures shall be reconciled. If the required budgetary comparison information is included in the basic financial statements, the reconciliation shall be included on the statement itself or in the notes to the financial statements. If the required budgetary comparison is presented as RSI, the reconciliation to GAAP basis shall appear in either a separate schedule or in the notes to the RSI (AAG SLV 11.14). The notes to the financial statements shall disclose the legal level of budgetary control for the entity and any excess of expenditures over appropriations at the legal level of budgetary control. The legal level of budgetary control for local governments is at the fund level. The legal level of budgetary control for school districts is at the function level. The legal level of budgetary control for state agencies is explained at Subsection A of Section 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 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 funded by severance tax bonds or general obligation bonds of the state shall be disclosed in the notes to the financial statements. The original appropriation, the appropriation period, expenditures

to date, outstanding encumbrances and unencumbered balances shall be shown in a [supplementary] SI schedule or in a note to the financial statements. The accounting treatment of any unexpended balances shall be fully explained in the [supplementary] 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 CAFR audit.

(b) The accounting treatment of any unexpended balances shall be fully explained in the [supplementary] 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:

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

#### T. Required auditor’s reports:

(1) The AICPA provides examples of independent auditor’s reports in the appendix to chapter 4 of AAG GAS and appendix A to chapter 16 of AAG SLV. Guidance is provided in footnote [3]4 to appendix A to chapter 16 of AAG SLV regarding wording used when opining on budgetary statements on the GAAP basis. IPAs conducting audits under this rule shall follow the AICPA report examples. All independent auditor’s reports shall include a statement that the audit was performed in accordance with auditing standards generally accepted in the United States of America *and with applicable government auditing standards* per GAGAS 4.18. This statement shall be modified in



accordance with GAGAS 2.24b if some GAGAS requirements were not followed. Reports for single audits of fiscal years beginning on or after December 26, 2014 shall have references to OMB Circular A-133 replaced with references to Title 2 U.S. Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance 200.110(b), AAG GAS 4.8[8]2, 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 Section 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 financial data schedule (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 described at Subsection W of Section 2.2.2.10 NMAC, 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.

**V. Joint powers agreements:**

(1) [AH] Any joint powers [agreements] agreement (JPA) shall be listed in a [supplementary] SI schedule in the audit report. The statewide CAFR 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 government agency where revenues and expenditures are reported.

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

**W. Capital asset inventory:**

(1) The Audit Act (at Section 12-6-10 NMSA 1978) requires agencies to capitalize only chattels and equipment that cost over five thousand dollars (\$5,000). All agencies shall maintain a capitalization policy that complies with the law. All agencies shall maintain an inventory listing of capitalized 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. Schedule of changes in assets and liabilities for agency funds:** Agency funds are excluded from the statement of changes in fiduciary net position (GASBS 34.110 as amended by GASBS 63) because they have no "net position." It is a requirement of the state auditor that a schedule of changes in assets and liabilities for agency funds be included as SI for all agencies that have agency funds, except school districts which are subject to different requirements. The schedule shall show additions and deductions for each agency fund. The schedule should appear toward the end of the table of

contents and requires an AU-C 725 opinion in the independent auditor's report. The requirements for school districts regarding the presentation of the statement of changes in assets and liabilities for agency funds are detailed in Subsection C of 2.2.2.12 NMAC.

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

**Z. 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)

PERA and ERB shall each obtain at least one concurring review of their respective schedules of employer allocations by an outside IPA firm (different from the firm performing

the AU-C 805 audit). The firm selected to perform the concurring review is subject to OSA approval.

(e)

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 Section 2.2.2.13 NMAC, prior to distribution to the participant employers.

(f)

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

(g)

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

(2) Regarding

whether the pension liability shall be included in the stand-alone financial statements of funds, see the GASB's comprehensive implementation guide, chapter 5, question and answer 5.129.1, which says, "except for blended component units, which are discussed in questions 5.125.2 and 5.125.3, statement 68 does not establish specific requirements for allocation of the employer's proportionate share of the collective net pension liability or other pension-related measures to individual funds. However, for proprietary and fiduciary funds, consideration shall be given to NCGA statement 1, paragraph 42, as amended, which requires that long-term liabilities that are "directly related to and expected to be paid from" those funds

be reported in the statement of net position or statement of fiduciary net position, respectively.” Stand-alone state agency financial statements that exclude the proportionate share of the collective net pension liability of the state of New Mexico based on the above guidance, shall include note disclosure referring the reader to the statewide CAFR for the state’s net pension liability and other pension-related information. The stand-alone report for the New Mexico component appropriation funds shall include note disclosure of the net pension liability for all the state agencies of the state of New Mexico.

#### AA. Federal Single

**Audit:** OMB Circular A-133 audits of states, local governments, and non-profit organizations has been replaced by Title 2 U.S. Code of Federal Regulations Part 200, *uniform administrative requirements, cost principles, and audit requirements for federal awards* (uniform guidance). The standards set forth in Subpart F - audit requirements, became effective December 26, 2013, and apply to audits of fiscal years beginning on or after December 26, 2014 (calendar-year-end December 31, 2015 and FY16 audits).

#### BB. GASBS 77:

GASB Statement 77, tax abatement disclosures, is effective for reporting periods beginning after December 15, 2015 (FY17 for agencies with a June 30 fiscal year end). The GAO may aggregate, analyze and publish GASBS 77 information. Unaudited, but final, GASBS 77 disclosure information in the format prescribed below 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. Failure to meet this due date results in a compliance finding. 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. In addition to the requirements of GASBS 77, the state auditor requires:

(1) 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.

(2) Agencies that make a GASBS 77 disclosure shall use the template GASBS 77 disclosure spreadsheet available on the OSA website and submit that electronic file with the final version of the audit report.

(3) If an agency does not need to make a GASBS 77 disclosure, that fact shall be disclosed in the notes to the financial statements.

(4) If an agency determines that any required disclosure is confidential, the agency shall cite the legal authority for that determination.

(5) If an agency has GASBS 77 disclosures to make as an agency that entered into a tax abatement agreement, all information contained in the OSA GASBS 77 disclosure spreadsheet must be included in the notes to the financial statements. If an agency received intergovernmental disclosures from another agency, all information contained in the OSA GASBS 77 disclosure spreadsheet must be included in the notes to the financial statements.

~~[CC. New standards that become effective in FY18 for agencies with a June 30 fiscal year end are:~~

~~(1) GASBS 75, accounting and financial reporting for postemployment benefits other than pensions;~~

~~(2) GASBS 81, irrevocable split-interest agreements;~~

~~(3) Some provisions of GASBS 82, pension issues - an amendment of GASB statements No. 67, No. 68, and No. 73;~~

~~(4) GASBS 85, Omnibus 2017;~~

~~(5) GASBS 86, certain debt extinguishment issues;~~

~~(6) Implementation Guide No. 2017-1,~~

~~implementation guidance update - 2017; and~~

~~(7) Implementation Guide No. 2017-2, financial reporting for postemployment benefit plans other than pension plans.]~~

~~[DD.] CC. GASBS 75, accounting and financial reporting for postemployment~~

~~benefits other than pensions:~~ The retiree health care authority (RHCA) shall prepare a schedule of employer allocations as of June 30 of each fiscal year. The state auditor requires the following:

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

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

(3) RHCA shall include note disclosures in the schedule of employer allocations report that detail each component of allocable OPEB expense at the fund level, excluding employer-specific OPEB expense for changes in

proportion. RHCA shall also include note disclosures by fund detailing collective fund-level deferred outflows of resources and deferred inflows of resources. The disclosures shall include a summary of changes in the collective deferred outflows and inflows of resources (excluding employer specific amounts), by year of deferral.

(4) RHCA shall each obtain at least one concurring review of the schedule of employer allocations by an outside IPA firm (different from the firm performing the AU-C 805 audit). The firm selected to perform the concurring review is subject to OSA approval.

(5) 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 Section 2.2.2.13 NMAC, prior to distribution to the participant employers.

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

(7) 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.

[2.2.2.10 NMAC - Rp, 2.2.2.10 NMAC, 2/27/2018; A, 3/12/2019]

**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 Section 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 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 accounts payable as explained in Subsection A of Section 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)	(7) Non-	(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.	reciprocal (not payments for materials or services rendered) interfund (internal) activity includes;	Regarding inter-agency transfers between legally separate component units and the primary government (the state of New Mexico):
(i)	(a)	(i)
state general fund;	transfers; and	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)	(b)	(ii)
other state funds;	reimbursements (GASBS 34.410):	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);
(iii)	(i)	(d)
internal service funds/inter-agency transfers; or	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.	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;
(iv)	(ii)	(e)
federal funds.	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;	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.
(d)	(ii)	(8)
For more detail about the SHARE chart of accounts see the DFA website.	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.	General services department capital projects: in general, GSD records the state of
(6)	(ii)	
Reversions to state general fund:		
(a)		
All reversions to the state general fund shall be identified in 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 forty-five 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.		

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 Section 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 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 Section 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:

**(a)**

STO administers the debt service funds for various bond issues that are obligations of the state of New Mexico. STO does not report in its departmental financial statements bonds payable that are obligations of the state of New Mexico. These payables and the related bond face amounts (proceeds) are reported in the state's CAFR. The note disclosures associated with STO's departmental financial statements shall explain that, by statute, STO is responsible for making the state's bond payments and keeping the related records; however, it is not responsible for the related debt, the state is. Additionally, the note disclosures associated with STO's departmental financial statements shall refer the reader to detailed SI in the STO audit report and the statewide CAFR. The STO departmental financial statements shall include SI regarding the state of New Mexico bond obligations. The SI schedules shall show;

**(i)**

the beginning and end-of-year bond payable balances, increases and decreases (separately presented), and the portions of each bond issuance that are due within one year, as required by GASBS 34.119;

**(ii)**

the details of debt service requirements to maturity, as required by GASBS 38.10; and

**(iii)**

any violations of bond covenants and related actions taken to address violations of bond covenants, as required by GASBS 38.9 and Section 12-6-5 NMSA 1978.

**(b)**

DFA has provided accounting and reporting guidance for state agencies that receive or administer special capital outlay appropriations from the state legislature that are financed by bond proceeds. DFA's guidance is available in the "FYI 2008 Audit Forum 9/30/08" section of DFA's website at <http://www.nmdfa.state.nm.us/Forums.aspx>. In the notes to the financial statements, agencies disclose that the bond proceeds were allocated by the legislature to the agency to administer disbursements to the project recipients, and the agency is not obligated in any manner for the related indebtedness. Agencies also disclose the specific revenue recognition policy for these appropriations. Each agency's IPA shall audit the agency's financial statement presentation of this capital outlay project information to ensure that they are presented in accordance with accounting principles that are generally accepted in the United States.

**(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.

**(17) Oversight**

duties of DFA FCD: on October 3, 2008, the state controller and the state auditor distributed a letter to agencies regarding FCD's request for agencies' draft financial statements for the preparation of the CAFR for the state. Agencies were concerned about violating Section 12-6-5\_NMSA 1978. However, Subsection[s] S of Section 6-5-2.1 NMSA 1978 states that FCD shall "have access to and authority to examine books, accounts, reports, vouchers, correspondence files and other records, bank accounts, money and other property of a state agency." In addition, Section 6-5-4.1 NMSA 1978 mandates that FCD shall compile the CAFR. After some consideration and discussion of the conflicting statutes, the state controller and the state auditor concluded that "pursuant to these rules, Sections 6-5-4.1 and Section 12-6-5\_NMSA 1978 should be construed to give effect to both statutes and the corresponding administrative rules. Therefore, an agency shall provide a copy of its draft audited financial statements to FCD in order that FCD may compile the CAFR. However, the agency may only release that information to FCD and not to the public. The agency's audit report also is not public record unless released in accordance with Section 12-6-5\_NMSA 1978." The unaudited draft financial statements submitted to DFA shall exclude the opinions and findings. The entire letter is available at: <http://www.nmdfa.state.nm.us/uploads/FileLinks/293b21bdb044c04bd0dbc6de01def7e/DFA-FCD%20Oversight%20Letter.pdf>.

**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 by discrete presentation unless an exemption from this requirement has been obtained from the state auditor. In the event that a primary government determines that a housing authority is a department or program of, rather than a component unit of, the primary government, a request for exemption from the discrete presentation requirement shall be submitted to the state auditor, by the primary government. The request for exemption shall include evidence that the housing authority is not a separate legal entity from the primary government and that the corporate powers of the housing authority are held by the primary government. Evidence included in the request shall address these issues:

**(a)**

the housing authority is not a corporation registered with the secretary of state;

**(b)**

there was never a resolution or ordinance making the housing authority a public body corporate; and

**(c)**

the housing authority was authorized under Section 3-45-1 *et seq.*, NMSA 1978.

**(d)**

Upon receipt of the exemption granted by the state auditor from the requirement for discrete presentation, the housing authority



department or program shall be included in the financial report of the primary government like any other department or program of the primary government.

(3) Audits of public housing authorities 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 public housing authorities 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 or his designee 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 discretion, the agency may "be audited separately from the audit of its local primary government entity. 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 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 financial data schedule (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 REAC staging database through the use of an identification (ID) and password;
- (ii) include a hard copy 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 a state-chartered charter school subject to oversight by PED is not subject to the requirement to use the same auditor as PED, that charter school is reminded that their audit contract shall be submitted to PED for approval. Charter schools shall ensure that sufficient time is allowed for PED review refer to Subsection F of Section 2.2.2.8 NMAC for the due date for submission of the audit contract to the OSA.

(2) Regional education cooperative (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 Section 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 Section 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 Section 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 Section 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 difference 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 entities created by a school district are agencies subject to the Audit Act.

**(d)**

Agency fund reporting: under GASBS 34 a statement of changes in fiduciary net position is required for pension trust funds, investment trust funds, and private-purpose trust funds. However, agency funds have no net position and are excluded from this presentation (GASBS 34.110 as amended by GASBS 63). It is a requirement of the state auditor that a schedule of changes in assets and liabilities - agency funds for the fiscal year be included as SI in the audit report for each school district and each charter school. The schedules shall show the changes (both additions and deductions) in the agency funds summarized by school or for each activity. The schedule requires an AU-C 725 opinion in the independent auditor's report.

**(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)**

Functions of the general fund: school district audit reports shall include individual fund financial statements and budgetary comparisons for the following functions 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 [supplementary] 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 Section 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 Section 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 Section 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 Section 2.2.2.12 NMAC.

**F. Pertaining to audits of hospitals:** hospitals subject to this rule shall prepare *indigent care cost and funding reports* and *calculations of cost of providing indigent care worksheets* schedules in accordance with the definitions for indigent care cost and funding components and the applicable

financial assistance policies, using the form provided by the OSA, for the three-year period ending June 30 of the year under audit. These schedules shall be included as supplementary information in the audit report and the auditor shall apply the procedures required by AU-C 725 in order to determine whether the schedules are fairly stated, in all material respects, in relation to the financial statements as a whole. The IPA shall include these 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 financial statements as a whole. The IPA shall submit an electronic excel version of the indigent care schedules using the form provided by the OSA with the final PDF version of the audit report as required by Subsection B of Section 2.2.2.9 NMAC. If a hospital subject to the requirements of this subsection is a component unit of another government, and the component unit issues a separate audit report outside of the primary government’s audit report, the primary government is not required to include this information in its audit report. The GAO may aggregate, analyze and publish indigent care information. IPAs performing audits of hospitals shall perform the procedures described below.

(1) On the *indigent care cost and funding reports*:

(a) recalculate the mathematical accuracy;

(b) compare funding amounts associated with Legislative appropriations to the amounts listed in the corresponding New Mexico Appropriations Act;

(c) compare amounts listed under ‘funding for indigent care’ to supporting detail;

(d) compare amounts listed under ‘cost of providing indigent care’ to the *calculations of cost of providing indigent care worksheets*;

(e) compare the amounts listed under ‘patients receiving indigent care services’ to supporting detail.

(2) On the *calculations of cost of providing indigent care worksheets*: compare amounts listed under each line item to supporting detail by patient account.

(3) Select a sample of the supporting detail by patient account associated with the *calculations of cost of providing indigent care worksheets* and perform the following procedures on the sampled items:

(a) obtain documentation supporting management’s determination that the patient qualified for indigent care and compare with the policies in effect during the three-year period ending June 30 of the year under audit;

(b) compare the total charges on the patient’s account to the supporting detail;

(c) note if a co-pay was required from the patient in accordance with the policies. Obtain information from management as to whether any required payment was received. If a payment was received, compare it to the supporting detail provided for the ‘funding for indigent care’ on the *indigent care cost and funding reports*;

(d) for ‘direct costs paid to other providers on behalf of patients qualifying for indigent care’, compare the costs to supporting invoices;

(e) obtain supporting information with respect to each percentage listed under ‘ratio of cost to charges’. Compare the support to the calculation of the percentage and recalculate the mathematical accuracy of the percentage.

**G. 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. The IPA shall submit an electronic excel version of the schedules of asset management costs using the form provided by the OSA with the final PDF version of the audit report as required by Subsection B of Section 2.2.2.9 NMAC. The GAO may aggregate, analyze and publish asset management cost information.

**H. 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, 2/27/2018; A, 3/12/2019]

**2.2.2.15 SPECIAL AUDITS, ATTESTATION ENGAGEMENTS, PERFORMANCE AUDITS AND FORENSIC AUDITS:**

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

(1) Definition of fraud: Fraud 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 assets, including theft of property, embezzlement of receipts, or fraudulent payments. Corruption means bribery and other illegal acts. (GAO-14-704G federal internal control standards paragraph 8.02).

(2) Definitions of waste and abuse: Waste is the act of using or expending resources

carelessly, extravagantly, or to no purpose. Abuse involves behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary operational practice given the facts and circumstances. This includes the misuse of authority or position for personal gain or for the benefit of another. Waste and abuse do not necessarily involve fraud or illegal acts. However, they may be an indication of potential fraud or illegal acts and may still impact the achievement of defined objectives. (GAO-14-704G federal internal control standards paragraph 8.03).

(3) Reports of fraud, waste & abuse: Pursuant to the authority set forth Section 12-6-3 NMSA 1978, the state auditor may conduct initial fact-finding procedures in connection with reports of financial fraud, waste and abuse in government made by agencies, IPAs or members of the public. Reports may be made telephonically or in writing through the fraud hotline or website established by the state auditor for the confidential reporting of financial fraud, waste, and abuse in government. Reports may be made telephonically to the fraud hotline by calling 1-866-OSA-FRAUD (1-866-672-3728) or reported in writing through the state auditor’s website at www.saonm.org. Reports received or created by the state auditor are 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.

(4) Confidential sources: The identity of a person making a report directly to the state auditor orally or in writing, or telephonically or in writing through the state auditor’s fraud hotline or website, alleging financial fraud, waste, or abuse in government is confidential audit information and may not be disclosed, unless the person making the report agrees to the disclosure of that person’s name.

**(5)**

Confidentiality of files: A report alleging financial fraud, waste, or abuse in government that is made directly to the state auditor orally or in writing, or telephonically or in writing through the state auditor's fraud hotline or website, any resulting special audit, performance audit, attestation engagement or forensic audit, and all records and files related thereto are confidential audit documentation and may not be disclosed prior to the release of an audit report, except to an independent auditor, performance audit team or forensic audit team in connection with a special audit, performance audit, attestation engagement, forensic audit or other existing or potential engagement regarding the financial affairs or transactions of an agency.

**(6)**

The OSA may make inquiries of agencies as part of the fact-finding process performed by the OSA's special investigations division. Agencies shall respond to the OSA inquiries within [2+] 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 attestation examinations, performance audits and forensic audits:**

**(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 or forensic audit 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, the term "special audit,

attestation engagement, performance audit or forensic audit" includes, without limitation, [~~agreed-upon procedures~~] AUP, consulting, and contract close-out (results-based award) engagements that address financial fraud, waste or abuse in government. The state auditor shall inform the agency of the designation by sending the agency a notification letter. The state auditor may specify the audit subject matter, the scope and any procedures required, the AICPA 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 audit 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 audits, 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 entities 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 or forensic audit, alone or with other professionals selected by the state auditor. Alternatively, the state auditor may require the engagement to be performed by an IPA or a team that may be comprised of any of the following: independent public accountants; individuals with masters degrees or doctorates in a relevant field such as business, public

administration, public policy, finance, or economics; individuals with their juris doctorate; CFE-certified fraud examiners; CFF-certified forensic auditors; CIA-certified internal auditors; or other specialists. If the state auditor designates an agency for an engagement to be conducted by an IPA or professional team, the agency shall:

**(a)**

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

**(b)**

follow all applicable procurement requirements which may include, but are not limited to, Uniform Guidance, Procurement Code (Section 13-1 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 [~~recommendation form~~] template for special audits, attestation engagements, performance audits or forensic audits [~~(the form)~~], provided at [www.osanm.org](http://www.osanm.org), which the agency shall print on agency letterhead; and

**(ii)**

a completed audit 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 [~~recommendation form and~~] 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 audit or select the IPA for that agency in accordance with the process described at Subsection F of Section 2.2.2.8 NMAC.

(4) Errors: [Recommendation forms and contracts] 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 [recommendation form and] contract to the agency indicating the reason(s) for the rejection.

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

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

(7) Access to records and documents: For any special audit, attestation engagement, performance audit or forensic audit, the state auditor and any engaged professionals shall have available to them all documents necessary to conduct the special audit, attestation engagement, performance audit or forensic audit. Furthermore, pursuant to Section 12-6-11 NMSA 1978, when necessary for a special audit, attestation engagement, performance audit or forensic audit, the state auditor may apply to the district court

of Santa Fe county for issuance of a subpoena to compel the attendance of witnesses and the production of books and records.

(8) Entrance, progress and exit conferences: The IPA or other professional shall hold an entrance conference and an exit conference with the agency, unless the IPA or other professional has submitted a written request to the state auditor for an exemption from this requirement and has obtained written approval of the exemption. The OSA has the authority to notify the agency or IPA or other professional that the state auditor shall be informed of the date of the entrance conference, any progress meetings and the exit conference. If such notification is received, the IPA or other professional and the agency shall invite the state auditor or his 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.

(9) Required reporting: All reports for special audits, attestation engagements, performance audits, or forensic audits related to financial fraud, waste or abuse in government undertaken pursuant to Section 2.2.2.15 NMAC (regardless of whether they are conducted pursuant to AICPA standards for consulting services or for attestation engagements) 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 Section 2.2.2.10 NMAC.

(10) Report review: The state auditor shall review reports of any special audit, attestation engagement, performance audit or forensic audit 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 organized and bound

report to the state auditor with a copy of any signed management representation letter. 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. [~~The required number of hardcopies specified in the professional services contract and an~~] An electronic version of the report, in the PDF format described at Subsection B of Section 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 final payment to the IPA and 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 or forensic audit engagement until the report is released and has become a public record pursuant to Section 12-6-5\_NMSA 1978. Except for the exception under Subsection B of Section 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 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 Section 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 of ninety-five percent and above may be made by the agency only after the state auditor has stated in a letter to the agency that the report has been released by the state auditor.

**C. Agency-initiated special audits, attestation engagements, performance audits and forensic audits:**

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

(2) Contracting: An agency, IPA or other professional shall not enter into a

professional services contract for a special audit, attestation engagement, performance audit, or forensic audit regarding the financial affairs and transactions of an agency and relating to financial fraud, waste or abuse in government without the prior written approval of the state auditor. The proposed professional services contract shall be submitted to the state auditor for review and approval after it has been signed by the agency and the IPA or other professional, unless the agency or IPA or other professional applies to the state auditor for an exemption and the state auditor grants the exemption. When contracting with an IPA or other professional, the agency shall contract only with an IPA or other professional that has been approved by the state auditor to conduct such work. The state auditor may, in its sole discretion, require a non-IPA professional to submit proof of qualifications, a firm profile or equivalent documentation prior to approving the contract. The contract shall include the contract fee, start and completion date, and the specific scope of services to be performed, and shall follow any template that the state auditor may provide.

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

[2.2.2.15 NMAC - Rp, 2.2.2.15 NMAC, 2/27/2018; A, 3/12/2019]

**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 determines 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. The annual revenue of a local public body shall be calculated on a cash basis, inclusive of state-funded grants but excluding capital outlay funds, federal and private grants. For the purpose of Section 2.2.2.16 NMAC “capital outlay” is funding provided through capital appropriations of the New Mexico legislature. For the purpose of Section 2.2.2.16 NMAC “private grant” means funding provided by a non-governmental entity.

**B. Determination of revenue and services:** Annually, following the procedures described in Subsection F of Section 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 Section 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 Section 2.2.2.16 NMAC;

(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 Section 2.2.2.16 NMAC;

(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 the remainder 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 [~~agreed-upon-procedures~~] AUP engagement in accordance with the audit contract for a tier three [~~agreed-upon-procedures~~] 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 [~~agreed-upon-procedures~~] AUP engagement in accordance with the audit contract for a tier four [~~agreed-upon-procedures~~] 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 [~~agreed-upon-procedures~~] AUP engagement in accordance with the audit contract for a tier five [~~agreed-upon-procedures~~] 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 [~~agreed-upon-procedures~~] AUP engagement in accordance with the audit contract for a tier six [~~agreed-upon-procedures~~] AUP engagement;

(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 Section 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.

**D. Procurement of IPA services:** A local public body required to obtain an [~~agreed-upon-procedures~~] AUP engagement shall procure the services of an IPA in accordance with Subsection F of Section 2.2.2.8 NMAC.

**E. Requirements of the IPA selected to perform the [~~agreed-upon-procedures~~] 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 Section 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 unless the IPA has submitted a written request to the OSA for an exemption from this requirement and has obtained written approval of the exemption from the OSA. Unless the cost of the AUP is five thousand dollars (\$5,000) (excluding GRT) or less, the exit conference shall be held in person; a telephone or webcam exit conference shall not meet this requirement. 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 or his designee 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 Section 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). The report shall be submitted to the OSA for review with the completed AUP report review guide. 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, the audit report shall be presented by the IPA, to a quorum of the governing authority of the agency at a meeting held in accordance with the Open Meetings Act, if applicable. This requirement only applies to agencies with a governing authority, such as a board of directors, board of county commissioners, or city council, which is subject to the Open Meetings Act. The IPA shall ensure that the required communications to those charged with governance are made in accordance with AU-C 260.12 to 260.14.

**F. 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 only after the state auditor has stated in a letter to the local public body that the ~~[agreed-upon-procedures]~~ AUP report has been released by the state auditor and the ~~[engagement and]~~ management representation letter ~~[have]~~ has been received by the state auditor.

**G. 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 ~~[agreed-upon-procedures]~~ AUP report or certification no later than five months after the fiscal year-end. Late ~~[agreed-upon-procedures]~~ AUP reports (not the current reporting period) are due not more than six months after the date the contract was executed. An organized bound hard copy of the report shall be submitted to the OSA. ~~[agreed-upon-procedures]~~ 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 5:00 p.m. 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 ~~[agreed-upon-procedures]~~ AUP report be submitted after the applicable due date, the auditor shall notify the state auditor and oversight agency 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. There shall be a separate notification for each late ~~[agreed-upon-procedures]~~ 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 the contract was signed after the report due date, the notification letter shall still be submitted to the OSA explaining the reason the ~~[agreed-upon-procedures]~~ AUP report will be submitted after the report due date. A copy of the letter shall be sent to the LGD, if LGD oversees the local public body. 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 ~~[agreed-upon-procedures]~~ AUP engagement until the report is released and has become a public record pursuant to Section 12-6-5NMSA 1978. At all times during the engagement and after the ~~[agreed-upon-procedures]~~ AUP report becomes a public record, the IPA shall follow applicable professional standards and Section 2.2.2 NMAC regarding the release of any information relating to the ~~[agreed-upon-procedures]~~ AUP engagement.

**H. Findings:** All

~~[agreed-upon-procedures]~~ 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 Section 2.2.2.10 NMAC.

**I. Review of ~~[agreed-upon-procedures]~~ AUP reports and related workpapers:**

~~[Agreed-upon-procedures]~~ 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 ~~[agreed-upon-procedures]~~ 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 ~~[agreed-upon-procedures]~~ 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. ~~[The required number of hardcopies of the final report as specified in the professional services contract, an]~~ An electronic excel version of the findings summary form and an electronic version of the ~~[agreed-upon-procedures]~~ AUP report, in PDF format as described at Subsection B of Section 2.2.2.9 NMAC, shall all be delivered to the OSA within five business days. The OSA shall not release the ~~[agreed-upon-procedures]~~ 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, and final payment to the IPA. 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 ~~[agreed-upon-procedures]~~ 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 Section 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.

**J. IPA Independence:** IPA's that perform ~~[agreed-upon-procedures]~~ AUP engagements under Section 2.2.2.16 NMAC shall maintain independence in fact and appearance, in all matters relating to the engagement.

(1) An IPA who performs the local public body's annual ~~[agreed-upon-procedures]~~ AUP engagement shall not enter into any special audit or non-attest service

contracts with that local public body without the prior written approval of the state auditor.

(2) To obtain this approval, the IPA shall follow the requirements set forth in Subsection L of Section 2.2.2.8 NMAC. [2.2.2.16 NMAC, Rp, 2.2.2.16, 2/27/2018; A, 3/12/2019]

**REGULATION AND LICENSING DEPARTMENT SUBSTITUTE CARE ADVISORY BOARD**

The Regulation Licensing Department - Substitute Care Advisory Council approved, at its 12/17/2018 hearing, to repeal its rule 8.26.7 NMAC, Citizen Substitute Care Review, (filed 1/27/2017) and replace it with 8.26.7 NMAC, Citizen Substitute Care Review, adopted on 2/22/2019 and effective 3/12/2019.

**REGULATION AND LICENSING DEPARTMENT SUBSTITUTE CARE ADVISORY BOARD**

**TITLE 8 SOCIAL SERVICES  
CHAPTER 26 FOSTER CARE AND ADOPTION  
PART 7 CITIZEN SUBSTITUTE CARE REVIEW**

**8.26.7.1 ISSUING AGENCY:** Substitute Care Advisory Council, Regulation and Licensing Department, P.O. Box 25101, Santa Fe, New Mexico 87504. [8.26.7.1 NMAC - Rp 8.26.7.1 NMAC, 3/12/2019]

**8.26.7.2 SCOPE:** This rule sets out the duties of the substitute care advisory council relating to substitute care review boards pursuant to the citizen substitute care review act Section 32A-8-1 *et seq.*, NMSA 1978. [8.26.7.2 NMAC - Rp 8.26.7.2 NMAC, 3/12/2019]

**8.26.7.3 STATUTORY AUTHORITY:** Authority for Part 7 of Chapter 26 is found in Section 32A-8-1 *et seq.*, NMSA 1978. [8.26.7.3 NMAC - Rp 8.26.7.3 NMAC, 3/12/2019]

**8.26.7.4 DURATION:** Permanent. [8.26.7.4 NMAC - Rp 8.26.7.4 NMAC, 3/12/2019]

**8.26.7.5 EFFECTIVE DATE:** March 12, 2019 unless a later date is cited at the end of a section. [8.26.7.5 NMAC - Rp 8.26.7.5 NMAC, 3/12/2019]

**8.26.7.6 OBJECTIVE:** This rule establishes council responsibilities, membership criteria, and operating procedures for case reviews by board members. [8.26.7.6 NMAC - Rp 8.26.7.6 NMAC, 3/12/2019]

**8.26.7.7. DEFINITIONS:**  
**A. "Advisory committee"** means the six-member advisory committee appointed by the council.

**B. "Board"** means a substitute care review board established by the council for the purpose of reviewing cases.

**C. "Council"** means the substitute care advisory council.

**D. "Department"** means the children, youth and families department.

**E. "Member"** means an individual appointed by council staff and who maintains training, participation, and conduct expectations.

**F. "Staff"** shall include any individual employed or independently contracted by an entity contracting with the council or staff employed or independently contracted by the regulation and licensing department (RLD). [8.26.7.7 NMAC - Rp 8.26.7.7 NMAC, 3/12/2019]



**8.26.7.8 COUNCIL RESPONSIBILITIES:**

**A.** The council shall elect a chair, vice-chair, and any other officers deemed necessary.

**B.** The council shall hold a meeting quarterly and at other times as determined by the chair.

**(1)** The agenda for the first quarter meeting shall include, but is not limited to:

**(a)** a review of prior fiscal year information for the purposes of identifying recommendations for the revision or enactment of statutes and revision or adoption of policies or procedures related to the issues regarding substitute care, including changes to the citizen substitute care review act; and

**(b)** the appointment of the advisory committee.

**(2)** The agenda of the third quarter meeting shall include, but is not limited to: the renewal of the Open Meetings Act resolution.

**(3)** The agenda for the fourth quarter meeting shall include, but is not limited to:

**(a)** the adoption of priority criteria for case reviews for the subsequent fiscal year;

**(b)** the training requirements for the subsequent fiscal year; and

**(c)** the appointment process for the advisory committee for the subsequent fiscal year.

**C.** By November 1<sup>st</sup> of each year, the council, with support of staff, will distribute an annual report with its recommendations to the department, the courts, and the appropriate legislative interim committees regarding statutes, rules, policies, and procedures relating to substitute care. Each report shall not contain confidential information, but shall include recommendations for any changes to boards. More frequent reporting may be authorized at the discretion of the council.

[8.26.7.8 NMAC - N, 3/12/2019]

**8.26.7.9 MEMBERSHIP:**

**A.** Recruitment:  
**(1)** Staff will pursue ongoing recruitment of members.

**(2)** Recruitment will focus on including individuals who:

**(a)** are representative of the communities of New Mexico;

**(b)** have expertise in the prevention and treatment of child abuse and neglect;

**(c)** are adult former victims of child abuse and neglect; and

**(d)** meet eligibility requirements.

**B.** Eligibility:  
**(1)** No individual or relative of an individual prohibited from serving pursuant to Subsection C of Section 32A-8-5 NMSA 1978 shall serve as a member.

**(2)** No individual, who has been convicted of, or who faces pending charges for a felony or misdemeanor involving a sex offense, child abuse or neglect, or related charges that may pose risks to children shall serve as a member.

**C.** Application process - the application process shall, at a minimum, include:

**(1)** Reference and background checks completed by staff to include, but not be limited to, information available from New Mexico courts, the New Mexico sex offender registry, and the department's records of prior child abuse and neglect cases.

**(2)** Interviews conducted via phone or in-person, or a combination thereof, by staff. Current members may be included in the interviews at the discretion of staff.

**(3)** Successful completion of on-line or in-person training, or a combination thereof.

**(4)** Acknowledgement, in writing, of confidentiality requirements.

**(5)** Observation of at least two board meetings.

**D.** Appointment:

**(1)** Members will be appointed by council staff for a term of two years.

**(2)** Members shall sign and adhere to the code of conduct established by the council.

**(3)** Members shall be eligible for reappointment, subject to successful completion of the renewal process established by the council prior to reappointment.

**E.** Training:

**(1)** Members shall meet training requirements as established by the council.

**(2)** Training may be conducted quarterly or annually, on-line or in-person, or a combination thereof. Additional training may be authorized at the discretion of the council.

**F.** Termination:

**(1)** Members shall resign in writing, and participate in an exit survey if possible.

**(2)** Staff may temporarily suspend or permanently remove a member upon a reasonable belief that the Member does not meet membership eligibility criteria, or has violated the member code of conduct, rules or expectations of members established by the council.

[8.26.7.9 NMAC - N, 3/12/2019]

**8.26.7.10 ADVISORY COMMITTEE:**

By June 30 of each year, the council shall determine the process of reappointing or nominating members to serve on the advisory committee to the council. The council shall appoint a six-member advisory committee by October 1 of each year. Advisory committee members are appointed to one-year terms and may be reappointed. The advisory committee shall meet with the council at least once a year to present its recommendations on matters relating to substitute care review.

[8.26.7.10 NMAC - Rp 8.26.7.10 NMAC, 3/12/2019]



**8.26.7.11 CASE INFORMATION REQUIREMENTS:**

**A.** Information necessary for staff to determine whether a case meets the priority criteria established by the council for review may include, but is not limited to the following:

- (1) identifying information;
- (2) court case number;
- (3) department case number;
- (4) department case name;
- (5) date of custody;
- (6) findings of fact for custody;
- (7) affidavits;
- (8) number of incidences of abuse or neglect, and an assessment of the severity of abuse or neglect;
- (9) notation of any behavioral health issues of the child or a household member that are known to have previously caused behavior that may present a safety risk to the child;
- (10) description of the department’s reasonable efforts to identify and locate all relatives and conduct home studies with any fit and willing relative expressing an interest in providing permanency for the child;
- (11) number and names of siblings to the child, and whether such siblings are placed in the same or different households;
- (12) case plan(s);
- (13) court orders, including all attachments;
- (14) advanced calendar of expected court hearings;
- (15) notices of judicial hearings;
- (16) contact information for all parties and service providers to the case.

[8.26.7.11 NMAC - Rp 8.26.7.9 NMAC, 3/12/2019]

**8.26.7.12 DESIGNATION OF CASES FOR REVIEW:** No later than June 30 of each year, the council shall designate priority criteria for reviews for the subsequent fiscal year. Such criteria shall include consideration of the importance of:

- A.** sibling placements;
- B.** the frequency and severity of neglect or abuse;
- C.** the behavioral health status of household members;
- D.** the placement of children in households where there are no relatives of the children;
- E.** data related to demographics, and
- F.** relevant trend data.

[8.26.7.12 NMAC - Rp 8.26.7.13 NMAC, 3/12/2019]

**8.26.7.13 OPERATIONS OF BOARDS:**

- A.** Staff shall coordinate and facilitate boards for case reviews.
- B.** No person shall serve on a board prior to completing the application process established by the council.
- C.** No person shall serve on a board that involves a case review of a member’s relative or a case for which a real, perceived, or potential conflict of interest exists.
- D.** A board shall meet at least quarterly in each judicial district to review cases designated for review. A board may meet more frequently at the discretion of staff.
- E.** A board shall have no fewer than two members, and no more than five members.
- F.** To the extent possible, the composition of each board shall be broadly representative of the community in which the board meets.
- G.** Staff will provide notice of board meetings to the known parties in a case scheduled for review, and afford those entitled to receive notice in the case an opportunity to participate in the board meeting.
- H.** Prior to each board meeting, staff will provide board members with case information.

**I.** Staff will submit a report of the board’s findings and recommendations to the court and other parties entitled to receive notice of the review.

**J.** Staff may attend or designate a member to attend any judicial review on a case designated for review and comment to the court. [8.26.7.13 NMAC - Rp 8.26.7.8 NMAC, 3/12/2019]

**8.26.7.14 INFORMATION TRACKING AND REPORTING:** Staff will report the following to the council by September 1<sup>st</sup> and at other times as requested, ensuring that reports contain no confidential information:

- A.** Number of cases reviewed;
- B.** Number of cases where the board concurred and did not concur with the department’s progress towards permanency, including a description for the reason for the determination of concurrence or non-concurrence;
- C.** Recommendations to the department, the council, the administrative office of the courts, and the interim legislative committees identified by the council;
- D.** Proposed amendments to 8.26.7 NMAC, if any; and
- E.** Any other information requested by the council. [8.26.7.14 NMAC - N, 3/12/2019]

**HISTORY OF 8.26.7 NMAC: [RESERVED]**

**History of Repealed Material:** 8.26.7 NMAC, Citizen Substitute Care Review, filed 1/27/2017 - Repealed effective 3/12/2019.

**Other History:** 8.26.7 NMAC, Citizen Substitute Care Review, filed 1/27/2017 replaced 8.26.7 NMAC, Citizen Substitute Care Review, effective 3/12/2019.

**WORKFORCE  
SOLUTIONS,  
DEPARTMENT OF**

This is an amendment to 11.2.21 NMAC, adding section 11 effective 3/12/2019.

**11.2.21.11 LOCAL AND  
STATE WIOA COMPLAINTS:**

**A. Program  
complaints against local WIOA  
programs and policies.**

**(1) Who  
may file.** Applicants, participants, service providers, recipients and other interested parties may file a complaint alleging a non-criminal violation of local WIOA programs, agreements or the local workforce development board's policies and activities.

**(2) Time  
and place for filing.** Local program complaints shall be filed with the local administrative entity or one-stop operator within one year from the date of the event or condition that is alleged to be a violation of WIOA.

**(3) Initial  
review.**

**(a)**  
Written complaints will be taken by the local administrative entity or one-stop operator from the complainant or the complainant's designated representative. All complaints will be logged.

**(b)**  
If the complaint alleges a violation of any statute, regulation, policy, or program that is not governed by WIOA, the complaint will be referred to the appropriate organization for resolution. Notice of the referral will be sent to the complainant.

**(c)**  
A complaint file will be established that contains: all application and enrollment forms, if appropriate; the complete statement and form; chronological log of events; relevant correspondence; and a record of the resolution attempted.

**(4) Informal  
resolution.** An attempt should be made to informally resolve the complaint to the satisfaction of all parties. This informal resolution

process shall be completed within 10 calendar days from the date the complaint was filed. If all parties are satisfied, the complaint is considered resolved. The terms and conditions of the resolutions shall be documented in the complaint file.

**(5) Formal  
resolution.** When no informal resolution is possible, the local administrative entity or one-stop operator will forward the complaint and a copy of the file to the NMDWS WIOA administrator to review the complaint file, conduct a further investigation, if necessary, and issue a determination within 20 calendar days from the date the complaint was filed.

**(6) Appeal.**  
**(a)**  
Any party dissatisfied with the formal resolution determination, or any party who has not received a determination or a formal resolution within 20 calendar days from the date the complaint was filed, may file an appeal. An appeal shall be filed with the department of workforce solutions within 90 calendar days from the date the complaint was originally filed.

**(b)**  
The NMDWS WIOA administrator will review the record and issue a decision on appeal within 30 calendar days from the date the appeal was received by the state administrative entity.

**(c)**  
Any party dissatisfied with the decision on appeal of the NMDWS WIOA administrator may request a hearing within 10 calendar days from the date of the decision. NMDWS will schedule the hearing and forward the complaint to the NMDWS hearing officer. The NMDWS WIOA administrator will monitor the processing of the complaint.

**(7) Hearing.**  
The NMDWS hearing officer will schedule a formal hearing by written notice mailed to all interested parties at least seven calendar days prior to the hearing. The notice will include the date, time, and place of the hearing. The hearing shall be conducted within 45 calendar days from the date the complaint was filed.

Parties may present witnesses and documentary evidence and question others who may present evidence and witnesses. Parties may be represented by an attorney or another designated representative, and may request that records and documents be produced. All testimony will be taken under oath or affirmation. The hearing will be recorded. The hearing officer's recommended resolution will include a summary of factual evidence given during the hearing and the conclusions upon which the recommendation is based.

**(8) Final  
decision.** The NMDWS WIOA administrator will review the recommendation of the hearing officer and will issue a final decision within 60 calendar days from the date the complaint was filed.

**B. Program  
complaints against state WIOA  
programs and policies.**

**(1) Who  
may file.** Applicants, participants, service providers, recipients and other interested parties, may file a complaint alleging a non-criminal violation of statewide WIOA policies, activities, or agreements.

**(2) Time and  
place for filing.** Statewide program complaints shall be filed with the NMDWS WIOA administrator within one year from the date of the event or condition that is alleged to be a violation of WIOA.

**(3) Initial  
review.**

**(a)**  
Written complaints will be taken from the complainant or the complainant's designated representative. All complaints will be logged.

**(b)**  
When the complaint alleges a violation of local WIOA programs, policies, or agreements, the complaint will be referred to the local administrative entity for processing under the complaint procedures for program complaints against local WIOA programs. If the complaint alleges a violation of any statute, regulation, policy or program that is not part of WIOA, the complaint

will be referred to the appropriate organization. Notice of the referral will be sent to the complainant.

**(4) Informal**

**resolution.** An attempt should be made to informally resolve the complaint to the satisfaction of all parties. This informal resolution process shall be completed within 10 calendar days from the date the complaint was filed. If all parties are satisfied, the complaint is considered resolved and the terms of the conditions of the resolution shall be documented in the complaint file.

**(5) Formal**

**resolution.**

**(a)**

When no informal resolution is possible, the NMDWS WIOA administrator will forward the complaint together with a copy of the complaint file to the NMDWS hearing officer who will review the complaint file, conduct a further investigation if necessary, and issue a determination within 20 calendar days from the date the complaint was filed. If further review of the determination is not requested, the complaint is considered resolved and the resolutions should be documented in the complaint file.

**(b)**

Any party dissatisfied with the determination may request a hearing within 10 calendar days of the date of determination. NMDWS will schedule the hearing and forward the program complaint to the NMDWS hearing officer for resolution. The NMDWS WIOA administrator will monitor the processing of the complaint.

**(6) Hearing.**

The NMDWS hearing officer will schedule a formal hearing by written notice, mailed to all interested parties at least seven calendar days prior to the hearing. The notice will include the date, time, and place of the hearing. The hearing shall be conducted within 45 calendar days from the date the complaint was filed. Parties may present witnesses and documentary evidence, and question others who may present evidence and witnesses. Parties may be represented by an attorney or another

designated representative, and may request that records and documents be produced. All testimony will be taken under oath or affirmation. The hearing will be recorded. The hearing officer's recommended resolution will include a summary of factual evidence given during the hearing and the conclusions upon which the recommendation is based.

**(7) Final**

**decision.** The NMDWS WIOA administrator will review the recommendation of the hearing officer and will issue a final decision within 60 calendar days from the date the complaint was filed.

[11.2.21.11 NMAC - N, 3/12/2019]

## End of Adopted Rules

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# 2019 New Mexico Register

## Submittal Deadlines and Publication Dates

### Volume XXX, Issues 1-24

Issue	Submittal Deadline	Publication Date
<b>Issue 1</b>	<b>January 4</b>	<b>January 15</b>
<b>Issue 2</b>	<b>January 17</b>	<b>January 29</b>
<b>Issue 3</b>	<b>January 31</b>	<b>February 12</b>
<b>Issue 4</b>	<b>February 14</b>	<b>February 26</b>
<b>Issue 5</b>	<b>February 28</b>	<b>March 12</b>
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<b>Issue 7</b>	<b>March 28</b>	<b>April 9</b>
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