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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

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Notices of Rulemaking and Proposed Rules

CULTURAL AFFAIRS, DEPARTMENT OF HISTORIC PRESERVATION DIVISION

CULTURAL PROPERTIES REVIEW COMMITTEE PUBLIC RULE HEARING AND REGULAR BOARD MEETING

NOTICE IS HEREBY GIVEN that the Cultural Properties Review Committee (CPRC) will convene a public hearing on Friday, April 17, 2020 at 1:00 pm in the Old Senate Chambers, Room 238 in the Bataan Memorial Building, 407 Galisteo Street, Santa Fe, NM 87501. Following the hearing, the CPRC will convene a board meeting to adopt the rule and take care of regular board business.

The purpose of the hearing is to consider repealing and replacing rule 4.10.17 NMAC, Standards for Monitoring. The CPRC proposes to repeal and replace the rule in order to facilitate the effective administration of permits for archaeological monitoring on state land.

The statutory authority for the proposed changes to 4.10.17 NMAC is found in Section 18-6-5(O) NMSA 1978 of the Cultural Properties Act. The CPRC is considering the adoption of a new rule 4.10.17 NMAC in order to clarify when archaeological monitoring plans are necessary, add a section on the review of monitoring plans, clarify the process for review of monitoring reports, and add a section on curation of collections and records.

The proposed rule is available at the Historic Preservation Division (HPD) website, www.nmhistoricpreservation.org, and at the HPD office located in the Bataan Memorial Building, 407 Galisteo Street, Suite 236, Santa Fe, New Mexico 87501. To request that a copy of the proposed rule be mailed to you, submit your request in writing to Historic Preservation Division, 407 Galisteo Street, Suite 236, Santa Fe, New Mexico 87501, by email to

nm.shpo@state.nm.us, or via fax to (505) 827-6338.

The CPRC is currently accepting public comments on the proposed rule. Additionally, any person may appear at the hearing to submit their comments. Written comments may be submitted by mail to: Historic Preservation Division, 407 Galisteo Street, Suite 236, Santa Fe, New Mexico 87501, by email to nm.shpo@state.nm.us, or via fax to (505) 827-6338. Written comments should be submitted for the CPRC's consideration no later than 1:00 pm on April 17, 2020. Written comments will be posted on HPD's website.

Individuals 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 should contact Annette Apodaca at 505-827-6314 or annette.apodaca2@state.nm.us at least five business days prior to the hearing.

PHARMACY, BOARD OF

NOTICE OF REGULAR BOARD MEETING AND RULE HEARING

The New Mexico Board of Pharmacy will convene on April 16th & 17th, 2020 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. All proposed language regarding rule hearings is linked to 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 at least one week in advance of 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 Cheranne McCracken 505-222-9830 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 Cheranne McCracken, at 505-222-9830 or e-mail mccracken@state.nm.us if a summary or other type of accessible format is needed.

The Board will address:

All Board Matters:

Rule Hearings:
April 16, 2020 9:10 a.m.

16.19.6 NMAC – PHARMACIES:
Sections 1, 2, 17, and 21 - administrative updates and corrections. Amendment to Section 23, to allow the transfer of an original unfilled non-controlled substance prescription. Record keeping

requirements are specified, and transfer or forwarding of controlled substance prescriptions is clarified for consistency with federal law.
STATUTORY AUTHORITY:
 Paragraph (6) of Subsection (A) of Section 61-11-6 NMSA 1978

16.19.30 NMAC –
COMPOUNDING OF NON-STERILE PHARMACEUTICALS:
 Amendment to Sections 1, 2, and 3 – administrative updates. Amendment to Section 9, to allow a licensed pharmacy to compound non-sterile, non-controlled substance preparations for veterinarian office use. The office use preparation may be dispensed by a veterinarian for a patient under specific conditions, which include: the patient has an emergency condition that the compounded drug is necessary to treat, and timely access to a compounding pharmacy is not available. Up to a five day supply may be dispensed for use in a single course of treatment. Product from an outsourcing facility may not be dispensed.
STATUTORY AUTHORITY:
 Paragraph (6) of Subsection (A) of Section 61-11-6 NMSA 1978

Disciplinary Hearings: note – the information below is tentative. Final hearing date and time for each case will be included in the agenda posted to the board’s website at least 72 hours before the meeting. Additional hearing, if scheduled, will be included in the agenda.

April 16, 2020 1:30 p.m.
 Monument Pharmacy, PH 3835, Case 2018-039

3:30 p.m.
 Kelly Kemper, RP 5290, Case 2018-061

Executive Director’s Report:

Published in NM Register March 10, 2020
 Published in Albuquerque Journal March 10, 2020

PUBLIC DEFENDER DEPARTMENT

NOTICE OF PUBLIC HEARING

Public Hearing. The New Mexico Public Defender Commission (“Commission”) gives notice that the Commission will conduct a public hearing to obtain public input on the possible adoption of an amended rule concerning Public Defender Department Employees Running in Partisan Elections.

The hearing is scheduled to occur on May 1, 2020, as follows:
 Law Offices of the Public Defender
 505 Marquette Ave. NW
 17th Floor Conference Room
 Albuquerque, New Mexico 87102
 The hearing may be recessed and reconvened at a later date as needed.

Constitutional and Statutory Authority: Article VI, Sec. 39 of the Constitution of New Mexico establishing an independent Public Defender Commission; Section 31-15-2.4(B)(6) NMSA 1978; Section 31-15-7 NMSA 1978; 10.12.13 NMAC.

Purpose: Public Defender Department employees are currently prohibited from being candidates for partisan political office. The Public Defender Commission (“Commission”) will receive public testimony regarding the participation of Department employees in seeking partisan political office.

Summary of Full Text: The proposed rule amendment to 10.12.6.10 NMAC - PROHIBITED POLITICAL ACTIVITIES would prohibit Department employees from “allowing political or personal considerations to conflict with the interests of a Department client’s case. This amendment would also prohibit Department employees from “using any state, department or client equipment, facilities, property or time resources for political purposes.”

The proposed rule amendment to 10.12.6.11 NMAC - PUBLIC/

POLITICAL OFFICE requires employees to use annual leave or leave without pay, subject to approval pursuant to Department policy, if campaigning requires the employee to be absent from assigned duties. In addition, this amendment would require the resignation of the employee if elected. An employee would also be required to provide 30 days’ notice prior to commencing the campaign so the Department can monitor compliance with the Hatch Act and any other law.

The proposed amendment to 10.12.6.3 NMAC – **STATUTORY AUTHORITY**, statute citations were rewritten to conform to correct legislative styles. And an amendment to 10.12.6.15 NMAC - **DUTY TO COOPERATE WITH INVESTIGATIONS**, ‘or’ was removed from ‘and/or’ to conform to correct legislative styles.

Public Comment. Interested parties may provide comment at the public hearing or may submit written comments by mail or electronically via email to judy.gonzales@lopdm.us (505)395-2887 or mailed to Judy Gonzales, Law Offices of the Public Defender, 301 N. Guadalupe, Suite 101, Santa Fe, N.M. 87501. A copy of the proposed rule may also be requested by contacting Judy Gonzales at the Department at (505) 395-2887. The proposed rule may also be obtained on the LOPD website. The public comment period is from March 11, 2020 to April 15, 2020, at 5:00p.m. (MDT).

The Commission will review all feedback received during the public comment period.

If you are a person with a disability and you require this information in an alternate format or require a special accommodation to participate in the public hearing, please contact Judy Gonzales in Santa Fe at (505) 395-2887. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the Department upon request by providing copies directly to a requestor or by making them available on the Department's website or at the Law Offices of the Public Defender.

PUBLIC EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

Public Hearing. The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing on Monday, April 13, 2020 from 10 a.m. to 12 p.m. (MDT) in Mabry Hall, located in the Jerry Apodaca Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico 87501. The purpose of the public hearing is to receive public input on the proposed new rule 6.30.16 NMAC, Extended Learning Time Program. At the hearing, the PED will provide a verbal summary statement on record. Attendees who wish to provide public comment on record will be given three (3) minutes to make a statement concerning the rule changes. Written comment will also be accepted at the hearing.

Explanation of Purpose and Summary of Text

The purpose of the proposed new rule **6.30.16 NMAC, Extended Learning Time Program**, is to provide criteria for the development and implementation of the extended learning time program to maximize successful outcomes for students. Development and implementation includes operating, assessing, and evaluating extended learning time programs, and assisting school districts and charter schools as they build capacity to offer extended learning time programs.

Statutory Authorization(s):

Sections 9-24-8, 22-1-2, 22-2-2, and 22-8-23.10 NMSA 1978.

No technical information served as a basis for this proposed rule change.

Public Comment. Interested parties may provide comment at the public hearing or may submit written comments by mail to John Sena, Policy Division, New Mexico Public Education Department, 300 Don Gaspar Avenue, Room 101, Santa Fe, New Mexico 87501, by electronic mail to rule.feedback@state.nm.us, or by fax to (505) 827-6520. All written comments must be received no later than 5 p.m. (MDT) on Monday, April 13, 2020. The PED encourages the early submission of written comments. The public comment period is from March 10, 2020 to April 13, 2020 at 5:00 p.m. (MDT).

The PED will review all feedback received during the public comment period and issue communication regarding a final decision at a later date.

Copies of the proposed rules may be accessed through the page titled, "Rule Notification," on the PED's website at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>, or may be obtained from John Sena at (505) 570-7816 during regular business hours.

Individuals with disabilities who require the above information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact John Sena at (505) 570-7816 as soon as possible before the date set for the public hearing. The PED requires at least 10 calendar days advance notice to provide any special accommodations requested.

RACING COMMISSION

AMENDED NOTICE OF PUBLIC MEETING AND RULE HEARING

The New Mexico Racing Commission (Commission) will hold a Public Meeting and Rule Hearing on April

16, 2020. The Rule hearing will be held during the Commission's regular business meeting with the public session beginning at 9:00 a.m. The Commission will re-convene a regular meeting to adopt the rules and take care of regular business. The Rule Hearing and Commission meeting will be held in the Boardroom located at the New Mexico Racing Commission, 4900 Alameda Blvd., NE, Albuquerque, NM.

The Commission is proposing the following amendments listed below to the rules Governing Horse Racing in New Mexico to clarify rule regarding summary suspension and update the most current version of the ARCI Uniform Classification Guidelines for Foreign Substances and Recommended Penalties and Model Rule, modifying multiple-medication violation penalties, correcting typographical error, modifying penalties of Category C violations, removing Naproxen as a permissible medication and updating the rule regarding non-steroidal anti-inflammatory drugs (NSAIDs).

15.2.1 NMAC - General Provisions
15.2.6 NMAC – Medications and Prohibited Substances

A copy of the proposed rule may be found on the Commission's website <http://nmrc.state.nm.us/rules-regulations.aspx>. You may also contact Denise Chavez at (505) 222-0714 to request to receive a copy of the proposed rules by regular mail.

Interested persons may submit their written comments on the proposed rules to the Commission at the address below and/or may appear at the scheduled meeting and make a brief verbal presentation of their view. All written comments must be received by the Commission by 5:00 PM on April 10, 2020. Please submit comments to:

Denise Chavez, Paralegal
New Mexico Racing Commission
4900 Alameda Blvd. NE

Albuquerque, NM 87113
 Telephone: 505.222.0714
 Fax: 505.222.0713
 Email: DeniseM.Chavez@state.nm.us

The **final** agenda for the Commission meeting will be available one hundred twenty (120) hours prior to the meeting. A copy of the **final** agenda may be obtained from Denise Chavez or from the Commission's website <http://nmrc.state.nm.us/>.

No technical information served as the basis for the proposed rule.

Anyone who requires special accommodations is requested to notify the Commission of such needs at least five days prior to the meeting.

Statutory Authority: Legal authority for this rulemaking can be found in the New Mexico Horse Racing Act, Sections 60-1A-1 to -30 (2007, as amended through 2017), NMSA 1978, which, among other provisions, specifically authorizes the Commission to promulgate rules and regulations and carry out the duties of the Act to regulate horse racing in the State.

The Commission proposes the following rule amendments:

Subsection B of 15.2.1.9 NMAC:

The purpose of the proposed amendment is to clarify the time limit for summary suspension for a Category A medication violation.

15.2.6.9 NMAC: To include Association of Racing Commissioners International's Model Rules of Racing December, 2020 version 14.1 and the Association of Racing Commissioners International's Controlled Therapeutic Medication Schedule for Horses, December, 2019, version 4.2.

Subsection B of 15.2.6.9 NMAC: The purpose of the proposed amendment is to clarify and establish

penalties for "Major" medication violations which are consistent with the Association of Racing Commissioners International's Model Rules guidelines.

Subsection O of 15.2.6.9 NMAC:

The purpose of the proposed amendment is to make point assigned for medication violations of Class A controlled therapeutic substances consistent with points assigned to non-controlled substances mandated by the Multiple Medication Violation Rule. Correcting a typographical error in paragraph 8.

REGULATION AND LICENSING DEPARTMENT

PUBLIC RULE HEARING AND REGULAR BOARD MEETING

The New Mexico Signed Language Interpreting Practices Board ("Board") will hold a rule hearing on Monday, April 20, 2020 at 9:00 a.m. Following the rule hearing, the Board will convene a board meeting to consider adoption of the rules and address regular business. The rule hearing and board meeting will be held at the New Mexico Regulation and Licensing Department, 5500 San Antonio Dr., NE, Albuquerque, New Mexico, in the Sandia Conference Room.

The purpose of the rule hearing is to consider proposed amendments to the following rules:

- 16.28.1 NMAC - General Provisions
- 16.28.2 NMAC - Education and Continuing Education Requirements
- 16.28.3 NMAC - Application and Licensure Requirements
- 16.28.4 NMAC - Statutory Authority
- 16.28.5 NMAC - Code of Professional Conduct
- 16.28.7 NMAC - Licensure For Military Service Members, Spouses and Veterans

To obtain and review copies of the proposed changes you may go to the Board's website at: http://www.rld.state.nm.us/boards/signed_

[language_interpreting_practices.aspx](http://www.rld.state.nm.us/boards/signed_language_interpreting_practices.aspx) or contact the New Mexico Signed Language Interpreting Practices Board at (505)476-4622 or by email at signlanguage.board@state.nm.us.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes to Theresa Montoya, Board Administrator, via electronic mail at signlanguage.board@state.nm.us or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Friday, April 17, 2020. Persons will also be given the opportunity to present their comments at the rule hearing. All written comments will be posted to the Board's website at: http://www.rld.state.nm.us/boards/signed_language_interpreting_practices.aspx, no more than three business days following receipt to allow for public viewing.

An individual with a disability who is in need of a reader, amplifier, qualified signed language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact Theresa Montoya, Board Administrator at (505) 476-4622.

Statutory Authority: The Signed Language Interpreting Practices Act, Sections 61-34-8 NMSA 1978, among other provisions, specifically authorizes the Board to "promulgate rules pursuant to the State Rules Act Chapter 14, Article 4, 1978 to effectively carry out and enforce provisions of the Signed Language Interpreting Practices Act."

Summary of Proposed Changes:

Summary of Proposed Changes:

In addition to making minor clarification changes, the proposed rules are summarized as follows:

16.28.1.7 NMAC - Definitions

The amendments to this section add a new definition for the term BEI that will increase an applicant's opportunity for licensure.

16.28.2.8 NMAC - Education Requirements

The amendments to this section will create flexibility for applicants to submit documentation that they have fulfilled the educational requirements for licensure.

16.28.2.9 NMAC - Continuing Education Requirements

The amendments to this section are to provide clarity regarding compliance with the Board's continuing education requirements and the submission of documents necessary to prove compliance with this section.

16.28.3.11 NMAC - Application for Licensure

The amendments to this section will create greater opportunity and provide clarity for those applicants who hold a BEI certification to apply for licensure, which is consistent with the Board's requirements for licensure under Section 61-34-8 NMSA.

16.28.3.12 NMAC - Requirements for a License for a Community Signed Language Interpreter

The amendments to this section will create greater opportunity and provide clarity for those applicants who hold a BEI certification to apply for licensure, which is consistent with the Board's requirements for licensure under Subparagraph (d) of Paragraph (2) of Subsection A of Section 61-34-9 NMSA 1978.

16.28.3.13 NMAC - Requirements for a License for an Educational Signed Language Interpreter

The amendments to this section are to clarify that the requirements for an educational signed language interpreter license are consistent with the requirements outlined in Subsection D of 16.28.3.11 NMAC.

16.28.3.14 NMAC - Requirements for a One-time, Five-Year Provisional License to a Person Not Meeting the Community Signed Language Interpreter or Educational Signed Language Interpreter Requirements for Licensure

The amendments to this section will create greater opportunity and provide clarity for those applicants who have completed a substantially equivalent interpreter education program or interpreter preparation program to apply for licensure, which is consistent with the Board's requirements for licensure under Subparagraph (c) of Paragraph (1) of Section 61-34-9 NMSA 1978.

16.28.3.16 NMAC - License Expiration

The amendments to this section clarifies the expiration date for provisional signed language interpreter licenses.

16.28.3.17 NMAC - License Renewal

The amendments to this section clarifies the requirements for reinstatement for each class of license issued pursuant to the Signed Language Interpreter's Practices Act.

16.28.3.19 NMAC - Exemptions

The amendments to this section are strictly for reformatting purposes so the section is more fluid and easily comprehensible.

16.28.3.20 NMAC - License Denial, Suspension, or Revocation

The amendments to this section provide clarity regarding the revocation or relinquishment of licenses where a licensee has failed to maintain proper certification. The amendments also provide clarification regarding whether a licensee who has allowed their license to lapse is eligible for a provisional license.

16.28.4.7 NMAC - Definitions

The amendments to this section correct minor grammatical and/or typographical errors.

16.28.4.11 - Standards of Practice Committee

The amendments to this section correct minor grammatical and/or typographical errors.

16.28.5.8 - Standards of Practice

The amendments to this section

correct minor grammatical and/or typographical errors.

16.28.7.10 - Renewal Requirements

The amendments to this section will create greater opportunity and provide clarity for those applicants who are military service members, a spouse or a veteran and who hold a BEI certification to apply for licensure which is consistent with the Board's requirements for licensure under Subparagraph (d) of Paragraph (2) of Subsection A of Section 61-34-9 NMSA. Additionally, this section also provides clarity for those applicants who have completed a substantially equivalent interpreter education program or interpreter preparation program to apply for licensure which is consistent with the Board's requirements for licensure under Subparagraph (c) of Paragraph (1) of Section 61-34-9 NMSA 1978.

SUPERINTENDENT OF INSURANCE, OFFICE OF**NOTICE OF PUBLIC HEARING****NOTICE IS HEREBY GIVEN**

that the Superintendent of Insurance (Superintendent), upon the suggestion of Hearing Examiner R. Alfred Walker, pursuant to Section 59A-30-8(A) NMSA 1978 will recommence the biennial hearing to consider promulgation of premium rates and any other matters related to the regulation of the business of title insurance deemed necessary by the Superintendent.

The purpose of the recommence hearing is to take evidence upon the 1. The purpose of the recommenced hearing is to take evidence upon the proposal of the parties to this rate making proceeding ("the Designated Parties") to settle the proceeding by agreeing that: basic premium rates shall be reduced by 2% beginning on July 1, 2020; there shall be no change to the existing agent/underwriter premium splits which shall remain at 80% for title insurance agents and 20% for title insurance underwriters for policy amounts of

less than \$2,000,000.00; none of the proposed rule changes discussed in NMLTA's pre-filed testimony will be adopted (but without prejudice to the refiling of those proposals); and the settlement, the Superintendent's Final Order, and all other orders entered in this ratemaking proceeding shall have no precedential value in future rate hearings.

The Superintendent will recommence the public hearing to consider the Designated Parties' proposed settlement of the promulgation of rates for title insurance beginning on Tuesday, April 14, 2020, beginning at 9:00 a.m. in the PRC Hearing Room on the ground floor of 1120 Paseo de Peralta, Santa Fe, NM 87501. The Superintendent has appointed R. Alfred Walker as the hearing examiner in the Rate Case, and the Hearing Examiner will take oral comments on the proposed settlement at the recommenced hearing. Any updates concerning the hearing date, time, or location will be available by subscribing to the "Title Rates & Rules" newsletter at: <https://newsletter.osi.state.nm.us/>

The public and any interested persons not already a party to this proceeding are encouraged to participate in the hearing by providing oral comments or filing written comments on the proposed settlement. The proposed settlement and all other filings shall be posted and available for public view on the OSI Docket: <http://idms.osi.newmexico.gov/Account/login>.

All written comments must be received by 4:00 p.m. on April 14, 2020 and shall be filed by hand delivering, mail, or electronic mail to:

OSI Records and Docketing
120 Paseo de Peralta, Room 331,
Santa Fe, NM 87501
OSI-docketfiling@state.nm.us
ATTN: Docket No. 19-00030-RATE-PC

Any person with a disability requiring special assistance in order

to participate in the hearing should contact Melissa Martinez, at 505-476-0333 no later than April 6, 2020.

The Superintendent will consider all oral comments and will review all written comments and responses from persons who are not Designated Parties or their respective members or employees filed or made on or before April 14, 2020.

The Hearing Examiner will consider all oral comments and will review all written comments from persons who are not Designated Parties or their respective members or employees filed or made on or before April 14, 2020.

The record in this rate case shall close upon notification to the Superintendent from the Hearing Officer that the Public Hearing has concluded.

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.

AUDITOR, OFFICE OF THE STATE

The Office of the State Auditor reviewed at its 2/17/2020 hearing, to repeal its rule 2.2.2 NMAC, Audits Of Governmental Entities - Requirements For Contracting Audits Of Agencies (filed 2/15/2018) and replace it with 2.2.2 NMAC, Audits Of Governmental Entities - Requirements For Contracting Audits Of Agencies, adopted 2/17/2020 and effective 3/10/2020.

AUDITOR, OFFICE OF THE STATE

**TITLE 2 PUBLIC
FINANCE
CHAPTER 2 AUDITS OF
GOVERNMENTAL ENTITIES
PART 2 REQUIREMENTS
FOR CONTRACTING AND
CONDUCTING AUDITS OF
AGENCIES**

**2.2.2.1 ISSUING
AGENCY:** Office of the State Auditor.

[2.2.2.1 NMAC - Rp, 2.2.2.1 NMAC, 3/10/2020]

2.2.2.2 SCOPE: Agencies as defined by the Audit Act and independent public accountants interested in contracting to perform audit services for those agencies.

[2.2.2.2 NMAC - Rp, 2.2.2.2 NMAC, 3/10/2020]

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

[2.2.2.3 NMAC - Rp, 2.2.2.3 NMAC, 3/10/2020]

2.2.2.4 DURATION: Permanent.

[2.2.2.4 NMAC - Rp, 2.2.2.4 NMAC, 3/10/2020]

2.2.2.5 EFFECTIVE DATE: March 10, 2020, unless a later date is cited at the end of a section.

[2.2.2.5 NMAC - Rp, 2.2.2.5 NMAC, 3/10/2020]

2.2.2.6 OBJECTIVE: The objective is to establish policies, procedures, rules and requirements for contracting and conducting financial audits, special audits, attestation engagements, performance audits, and forensic audits of governmental agencies of the state of New Mexico. [2.2.2.6 NMAC - Rp, 2.2.2.6 NMAC, 3/10/2020]

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. Definitions beginning with the letter "A":
(1) "AAG GAS" means AICPA Audit and Accounting Guide - Government auditing standards and Single Audits (latest edition).

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

(3) "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.

(4) "Audit" may refer to or include annual financial and compliance audit, special audit, attestation engagement, performance audit, forensic audit or AUP, unless otherwise specified.

(5) "Auditor" means independent public accountant.
(6) "AICPA" means American institute of certified public accountants.

(7) "AU-C" means U.S. auditing standards-AICPA (Clarified).

(8) "AUP" means agreed upon procedures.

B. Definitions beginning with the letter "B":
[RESERVED]

C. Definitions beginning with the letter "C":
(1) "CPA" means certified public accountant.

(2) "CPE" means continuing professional education.

(3) "CYFD" means the New Mexico children youth and families department.

D. Definitions beginning with the letter "D":

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

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

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

E. Definitions beginning with the letter “E”:
“ERB” means the New Mexico education retirement board.

F. Definitions beginning with the letter “F”:

(1) **“FCD”**
means financial control division of the department of finance and administration.

(2) **“FDIC”**
means federal deposit insurance corporation.

(3) **“FDS”**
means financial data schedule.

G. Definitions beginning with the letter “G”:

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

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

(3) **“GAO”**
means the government accountability office, a division of the OSA.

(4) **“GASB”**
means governmental accounting standards board.

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

(6) **“GSD”**
means the New Mexico general services department.

(7) **“GRT”**
means gross receipts tax.

H. Definitions beginning with the letter “H”:

(1) **“HED”**
means the New Mexico higher education department.

(2) **“HSD”**
means the New Mexico human services department.

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

I. Definitions beginning with the letter “I”:

(1) **“IPA”**
means independent public accountant.

(2) **“IRC”**
means internal revenue code.

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

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

L. Definitions beginning with the letter “L”:

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

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

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

N. Definitions beginning with the letter “N”:

(1) **“NCUSIF”** means national credit union shares insurance fund.

(2) **“NMAC”**
means New Mexico administrative code.

(3) **“NMSA”**
means New Mexico statutes annotated.

O. Definitions beginning with the letter “O”:

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

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

P. Definitions beginning with the letter “P”:

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

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

(3) **“PHA”**
means public housing authority.

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

R. Definitions beginning with the letter “R”:

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

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

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

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

S. Definitions beginning with the letter “S”:

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

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

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

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

(5) **“STO”**
means state treasurer’s office.

T. Definitions beginning with the letter “T”:

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

(2) **“TRD”**
means the New Mexico taxation and revenue department.

U. Definitions beginning with the letter “U”:

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

(2) **“Uniform guidance”** Title 2 U.S.

Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

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

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

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

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

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

Z. Definitions beginning with the letter “Z”: [RESERVED] [2.2.2.7 NMAC - Rp, 2.2.2.7 NMAC, 3/10/2020]

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 the fifth business day in January, in accordance with the guidelines set forth herein. The OSA shall review each firm profile for compliance with the requirements set forth in this rule. IPAs shall notify the state auditor of changes to the firm profile as information becomes available. The state auditor shall approve contracts only with IPAs who have submitted a complete and correct firm profile that has been approved by the OSA, and who have complied with all the requirements of this rule, including but not limited to:

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

(2) 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: 2.2.2.9 NMAC, report due dates, including notifying the state auditor regarding late audit reports and 2.2.2.13 NMAC, review of audit reports and audit documentation.

B. List of approved firms: The state auditor shall maintain a list of independent public accounting (IPA) firms that are approved and eligible to compete for audit contracts and 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 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 2.2.2.9 NMAC, or the terms of their individual agency contract(s);

(b) failure to submit late report notification letters in accordance with Subsection A of 2.2.2.9 NMAC;

(c) failure to comply with this rule;

(d) poor quality reports as determined by the OSA;

(e) poor quality working papers as determined by the OSA;

(f) a peer review rating of “pass with deficiencies” with the deficiencies being related to governmental audits;

(g) failure to contract through the OSA for New Mexico governmental audits or AUP engagements;

(h) failure to inform agency in prior years that the IPA is restricted;

(i) failure to comply with the confidentiality requirements of this rule;

(j) failure to invite the state auditor or 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 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 date of the letter of restriction; and

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

(b) The IPA’s written request for reconsideration shall include sufficient facts to rebut on a point for point basis each deficiency noted in the OSA’s letter of restriction. The IPA may request an opportunity to present in person its written request for reconsideration and provide

supplemental argument as to why the OSA’s determination should be modified or withdrawn. The IPA may be represented by an attorney licensed to practice law in the state of New Mexico.

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

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

F. Procedures to obtain professional services from an IPA: Concurrent with publication of the list of approved firms, the OSA shall authorize agencies to select an IPA to perform their audit or 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 2.2.2.16 NMAC. Agencies that receive and expend federal awards shall follow the uniform guidance procurement requirements from 2 CFR 200.317 to 200.326 and 200.509, and shall also incorporate applicable guidance from the following requirements. Agencies shall comply with the following procedures to obtain professional services from an IPA for an audit or AUP engagement.

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

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

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

(3) The agency is encouraged to request multiple year proposals for audit and AUP services, however the term of the contract shall be for one year only. The parties shall enter a new audit

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

(4) 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). 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*.

(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 2.2.2.8 NMAC in the audit report or AUP report.

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

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

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

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

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

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

(g) agencies with a fiscal year end other than June 30 shall use a due date 30 days before the end of the fiscal year;

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

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

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

(9) 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 2.2.2.8 NMAC the state auditor shall at a minimum consider the following factors, but may consider other factors in the state auditor's discretion that serve the best interest of the state of New Mexico and the agency:

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

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

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

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

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

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

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

(12) 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 AUP engagement;

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

(c) pursuant to Subsection A of Section

12-6-14 NMSA 1978, the state auditor is selecting the IPA for the agency;

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

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

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

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

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

(a) lack of experience of the IPA;

(b) failure to meet the auditor rotation requirements as follows:

(i) the IPA is prohibited from conducting the agency audit or 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 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) An audit contract, special audit contract, attestation engagement contract, performance audit contract, or forensic audit contract or AUP contract of an IPA that has:

(a) breached a prior-year contract;

(b) failed to deliver an audit or AUP report on time;

(c) failed to comply with state laws or regulations of the state auditor;

(d) performed non-audit services (including services related to fraud) for an agency or local public body it is performing an audit, special audit, attestation engagement, performance audit, forensic audit or an AUP for, without prior approval of the state auditor;

(e) performed non-audit services under a separate contract for services that may be disallowed by GAGAS independence standards;

(f) failed to respond, in a timely and acceptable manner, to an OSA audit, special audit contract, attestation engagement contract, performance audit contract, forensic audit contract, AUP report review or working paper review;

(g) impaired independence during an engagement;

(h) failed to cooperate in providing prior-year working papers to successor IPAs;

(i) not adhered to external quality control review standards as defined by GAGAS and 2.2.2.14 NMAC;

(j) has a history of excessive errors or omissions in audit or AUP reports or working papers;

(k) released the audit report or AUP report to the agency, local public body or the public before the audit release letter or the OSA letter releasing the AUP report was received from the OSA;

(l) failed to submit a completed signed contingency subcontractor form, if required;

(m) failed to submit a completed firm profile as required by Subsection A of 2.2.2.8 NMAC or failed to include all staff in the firm profile who would be working on the firm's engagements;

(n) reached the limit of contracts to which the state auditor restricted the IPA;

(o) failed to respond to communications from the OSA or engagement clients within a reasonable amount of time; or

(p) otherwise, in the opinion of the state auditor, the IPA was unfit to be awarded a contract.

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

H. Audit contract requirements: The agency shall use the appropriate audit or 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 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 audit or 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 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 AUP engagements of New Mexico governmental agencies.

K. Subcontractor requirements:

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

(2) In the event an IPA chooses to use a subcontractor to assist the IPA in working on a specific audit, then the IPA shall obtain the prior written approval of the state auditor to 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 2.2.2.8 NMAC. Subcontractors are subject to an independence analysis, which may include the IPA rotation requirements of Subsection G of 2.2.2.8 NMAC. “Technical review contracts” are considered subcontracting and are subject to the requirements of this Section. The audit contract shall specify subcontractor responsibility, who shall sign the report(s), and how the subcontractor shall be paid. For additional information see the subcontract work section of the OSA website.

L. IPA independence:

IPAs shall maintain independence with respect to their client agencies in accordance with the requirements of *government auditing standards*, December 2018 revision, issued by the US-GAO (GAGAS 3.17-3.108).

(1) An IPA may not enter into any type of fraud-related engagement, including waste and abuse related engagements (as defined in Subsection A of 2.2.2.15 NMAC) with a New Mexico governmental agency without first obtaining the prior written approval of the state auditor. A copy of the agency’s written notification to the state auditor (commonly referred to as the 12-6-6 letter) shall accompany the IPA’s request for approval to perform a fraud-related engagement where applicable. This requirement applies both when the IPA is directly contracted for the fraud-related engagement or is sub-contracted through another contractor. See 2.2.2.15 NMAC for the requirements to submit such reports to the OSA for review and release.

(2) A copy of a contract for an engagement unrelated to fraud, waste or abuse, and a copy

of any report resulting from such a contract, shall be submitted to the OSA when requested by the OSA.

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 2.2.2.9 NMAC to only the first fifty percent of the total fee.

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

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

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

N. Contract

amendment requirements:

(1) Contract amendments to contracts for audit services, AUP services, or non-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. 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 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 AUP engagement contract pursuant to the termination paragraph of the contract, the OSA shall be notified of the termination immediately. The party sending out the termination notification letter shall simultaneously send a copy of the termination notification letter to the OSA with an appropriate cover letter, addressed to the state auditor.

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

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

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

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

[2.2.2.8 NMAC - Rp, 2.2.2.8 NMAC 3/10/2020]

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, TRD, CYFD, DOH, DOT, HSD, GSD 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 of 2.2.2.10 NMAC: June 15;

(j) agencies with a fiscal year-end other than June 30 shall submit the audit report no later than *five months after the fiscal year-end*;

(k) regarding component unit reports (e.g., housing authorities, charter schools, hospitals, foundations, etc.), all separate audit reports prepared by an auditor that is different from the primary government's auditor, are *due fifteen days before the primary government's audit report is due*, unless some other applicable due date requires the report to be submitted earlier;

(l) any agency that requires its report to be released by December 31st for any reason (bonding, GFOA, etc.): the earlier of its agency due date or December 1; and

(m) late audit or AUP reports of any agency (not performed in the current reporting period): not more than six months after the date the contract was executed.

(2) If an audit report is not delivered on time to the state auditor, the auditor shall include this instance of non-compliance with Subsection A of 2.2.2.9 NMAC as an audit finding in the audit report. This requirement is not negotiable. If appropriate, the finding may also be

reported as a significant deficiency or material weakness in the operation the agency's internal controls over financial reporting pursuant to AU-C 265.

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

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

B. Delivery and release of the audit report:

(1) 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 2.2.2.13 NMAC. When the OSA rejects and returns a substandard audit report to the IPA, the OSA shall consider the audit report late if the corrected report is not resubmitted by the due date. The IPA shall also report a finding for the late audit report in the audit report. The firm shall submit an electronic version of the corrected rejected report for OSA review. The name of the electronic file shall be "corrected rejected report" followed by the agency name and fiscal year.

(2)

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

(3) IPAs are encouraged to deliver completed audit reports before the due date. All reports, except for reports prepared by the OSA, shall be addressed to the state auditor, the agency executive and governing body (if applicable). Reports prepared by the OSA shall be addressed to the agency executive and governing body (if applicable). The OSA shall review all audit reports submitted by the report due date before reviewing reports that are submitted after the report due date. Once the review of the report is completed pursuant to Subsection

A of 2.2.2.13 NMAC, and any OSA comments have been addressed by the IPA, the OSA shall indicate to the IPA that the report is ready to print. After the OSA issues the "ok to print" communication for the audit report, the OSA shall authorize the IPA to submit the corrected report with the following items to the OSA within five business days; an electronic searchable version of the audit report labeled "final", in PDF format, and an electronic Excel version of the summary of findings report and any other required electronic schedule (electronic schedules may not apply to engagements pursuant to 2.2.2.15 or 2.2.2.16 NMAC) if applicable, and an electronic excel version of the schedule of asset management costs for investing agencies, if applicable (all available at www.saonm.org). The OSA shall not release the report until the searchable electronic PDF version of the report and all required electronic Excel schedules are received by the OSA. The electronic file containing the final audit report shall:

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

(b) be version 5.0 or newer;

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

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

(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".

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

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

(5) After the release of a report, the OSA shall provide DFA and the legislative

finance committee with notification that the report is available on the OSA website.

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

(a) the attached report is a “reissued” report;

(b) the circumstances that caused the reissuance; and

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

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

(a) a statement that the changes did not rise to the level of requiring a reissued report;

(b) a description of the circumstances that caused the resubmitted updated report; and

(c) a summary of the changes that appear in the resubmitted updated report

compared to the prior released report. Agency management and the IPA are responsible for ensuring that the latest version of the resubmitted report is provided to each recipient of the prior version of the report. The OSA shall notify the appropriate oversight agencies regarding the updated report on the OSA website.

C. Required status reports: For an agency that has failed to submit audit or agreed-upon procedures reports as required by this rule, and has therefore been designated as “at risk” due to late reports, the state auditor requires the agency to submit written status reports to the OSA on each March 15, June 15, September 15, and December 15 that the agency is not in compliance with this rule. Status reports are not required for agencies that are included on the “at risk” list solely due to an adverse or disclaimed independent auditor’s opinion. The status report shall be signed by a member of the agency’s governing authority, a designee of the governing authority or a member of the agency’s top management. If the agency has a contract with an IPA to conduct the audit or perform the AUP engagement, the agency must send the IPA a copy of the quarterly status report. IPAs engaged to audit or perform AUP engagements for agencies with late reports are responsible for assisting these agencies in complying with the reporting requirements of this section. Failure to do so shall be noted by the OSA and taken 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, 3/10/2020]

2.2.2.10 GENERAL CRITERIA:

A. Scope of annual financial and compliance audits:

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

(a) The primary government shall determine whether an agency that is a separate legal entity from the primary government is a component unit of the primary government as defined by GASBS 14, 39, 61, and 80 (as amended). The flowchart at GASBS 61.68 may be useful in making this determination. The primary government shall notify all other agencies determined to be component units by September 15 of the subsequent fiscal year. Failure to meet this due date results in a compliance finding. 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 and is not statutorily required to be reported using the governmental format, that fact shall be explained in the notes to the financial statements (summary of significant accounting policies: financial reporting entity). If there was a change from the prior year's method of presenting a component unit or change in component units reported, the notes to the financial statements shall disclose the reason(s) for the change.

(b)

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

(c)

The state auditor requires component unit(s) to be audited by the same audit firm that audits the primary government (except for public housing authority component units that are statutorily exempt from this requirement, and the statewide 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;

(v)

the OSA standard contract form shall be used by both the primary government and the component unit;

(vi)

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

(vii)

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

(viii)

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

(d)

With the exception of the statewide 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).

(2) Audits

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

(a)

The level of planning materiality described at AAG SLV 4.72-4.73 and

exhibit 4-1 shall be used. Planning materiality for component units is at the individual component unit level.

(b)

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

(i)

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

(ii)

each major fund and the aggregate remaining fund information;

(iii)

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

(iv)

the related notes to the financial statements.

(c)

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

(d)

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

(i)

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

(ii)

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

(iii)

RSI schedules required by GASBS

43 and 74 for postemployment benefit plans other than pension plans;

(iv)

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

(v)

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

(e)

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

(i)

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

(ii)

the schedule of expenditures of federal awards required by uniform guidance;

(iii)

the schedule of pledged collateral required by Subsection P of 2.2.2.10 NMAC;

(iv)

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

(v)

the school district schedule of cash reconciliation required by Subsection C of 2.2.2.12 NMAC. In addition, the school district schedule of cash reconciliation SI shall be subjected to audit procedures that ensure the cash per the schedule reconciles to the PED reports as required by Subsection C of 2.2.2.12 NMAC;

(vi)

any other SI schedule required by this rule.

B. Governmental auditing, accounting and financial reporting standards:

The audits shall be conducted in accordance with:

(1) the most

recent revision of GAGAS issued by the United States government accountability office;

(2) U.S.

auditing standards-AICPA (clarified);

(3) uniform

administrative requirements, cost principles, and audit requirements for federal awards (uniform guidance);

(4) AICPA

audit and accounting guide, government auditing standards and single audits, (AAG GAS) latest edition;

(5) AICPA

audit and accounting guide, state and local governments (AAG SLV) latest edition; and

(6) 2.2.2

NMAC, requirements for contracting and conducting audits of agencies, latest edition.

C. Financial statements and notes to the financial statements:

The financial statements and notes to the financial statements shall be prepared in accordance with accounting principles generally accepted in the United States of America.

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

D. Requirements for preparation of financial statements:

(1) The

financial statements presented in audit reports shall be prepared from the agency’s books of record and contain amounts rounded to the nearest dollar.

(2)

The financial statements are the responsibility of the agency. The agency shall maintain adequate accounting records, prepare financial statements in accordance with accounting principles generally accepted in the United States of America, and provide complete, accurate, and timely information to the IPA as requested to meet the audit report due date imposed in Subsection A of 2.2.2.9 NMAC.

(3) If there

are differences between the financial statements and the books, the IPA shall provide to the agency the adjusting journal entries and the supporting documentation that reconciles the financial statements in the audit report to the books.

(4) If the IPA

prepared the financial statements in their entirety from the client-provided trial balance or underlying accounting records the IPA should conclude significant threats to independence exist. Workpapers shall include the IPA’s documentation of threats and safeguards in accordance with GAGAS. GAGAS Figure 2 “Independence considerations for preparing accounting records and financial statements” may be a useful tool to assist with GAGAS compliance. The fact that the auditor prepared the financial statements from the client-provided trial balance or underlying records shall be disclosed on the exit conference page of the audit report IPAs shall not prepare financial statements from the client-provided trial balance or underlying records if preparation of the financial statements would impair independence.

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 6.06 and 6.07.

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

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

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

(5) The IPA shall conduct an audit entrance conference with the agency. 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 6.57-6.60. Any violation of law or good accounting practice, including instances of non-compliance or internal control weaknesses, shall be reported as audit findings per Section 12-6-5 NMSA 1978. Separate management letter comments shall not be issued as a substitute for such findings.

G. Reverting or non-reverting funds: Legislation can designate a fund as reverting or non-reverting. The IPA shall review the state law that appropriated funds to the agency to confirm whether any unexpended, unencumbered balance of a specific appropriation shall be reverted and to whom. The law may also indicate the due date for the required reversion. Appropriate audit procedures shall be performed to evaluate compliance with the law and accuracy of the related liability account balances due to other funds, governmental agencies, or both. The financial statements and the accompanying notes shall fully disclose the reverting or non-reverting status of a fund or appropriation. The financial statements shall disclose the specific legislation that makes a fund or appropriation non-reverting and any minimum balance required. If non-reverting funds are commingled with reverting appropriations, the notes to the financial statements shall disclose the methods and amounts used to calculate reversions. For more information regarding state agency reversions, see Subsection A of 2.2.2.12 NMAC and the department of finance and administration (DFA) white papers "calculating reversions to the state general fund," and "basis of accounting-modified accrual and the budgetary basis." The statewide 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 suggest elevated risk in specific areas relevant to a particular agency's annual financial and compliance audit. These communications shall be referred to as "referrals." Referrals are considered confidential workpapers. Referrals may relate to any topic, including the scope of the annual financial and compliance audit. IPAs shall take the circumstances described in OSA referral communications into account in their risk assessment and perform such procedures as, in the IPA's professional judgment, are necessary to determine what further 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 2.2.2.13 NMAC the OSA may review IPA workpapers associated with the annual audit of any agency. OSA workpaper review procedures shall include examining the IPA

documentation associated with referrals. Insufficient or inadequate documentation may result in deficiencies noted in the workpaper review letter and may negatively impact the IPA during the subsequent firm profile review process. In accordance with Subsection D of 2.2.2.8 NMAC, an IPA may be placed on restriction if an IPA refuses to comply with OSA referrals in a timely manner.

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

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

J. State compliance audit requirements: An IPA shall identify significant state statutes, rules and regulations applicable to the agency under audit and perform tests of compliance. In designing tests of compliance, IPAs may reference AU-C 250 relating to consideration

of laws and regulations in an audit of financial statements and AU-C 620 relating to using the work of an auditor's specialist. As discussed in AU-C 250.A23, in situations where management or those charged with governance of the agency, or the agency's in-house or external legal counsel, do not provide sufficient information to satisfy the IPA that the agency is in compliance with an applicable requirement, the IPA may consider it appropriate to consult the IPA's own legal counsel. AU-C 620.06 and 620.A1 discuss the use of an auditor's specialist in situations where expertise in a field other than accounting or auditing is necessary to obtain sufficient, appropriate audit evidence, such as the interpretation of contracts, laws and regulations. In addition to the significant state statutes, rules and regulations identified by the IPA, compliance with the following shall be tested if applicable (with the exception of the statewide 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 eligible contributions are remitted to PERA. The IPA shall evaluate controls regarding employee eligibility for PERA and other benefits. IPAs shall evaluate risk associated with employees excluded from PERA and test that employees are properly excluded.

(7)

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

(8) Sale of

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

(9) Anti-

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

(10) Special,

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

(11) State

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

(12) Lease

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

(13)

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

(14)

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

(15) Article

IX of the state constitution limits on indebtedness.

(16) Any

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

(17) Retiree

Health Care Act, Sections 10-7C-1 to 10-7C-19 NMSA 1978. IPAs shall test to ensure eligible contributions are reported to NMRHCA.

NMRHCA employer and employee contributions are set forth in Section 10-7C-15 NMSA 1978.

(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 6.17-6.30. All finding reference numbers shall follow a standard format with the four-digit audit year, a hyphen and a three digit sequence number (e.g. 2019-001, 2019-002 ... 2019-999). All prior year findings shall include the finding numbers used when the finding was first reported under historical numbering systems in brackets, following the current year finding reference number, if different, to enable the report user to see what year the finding originated and how it was identified in previous years. Finding reference numbers for single audit findings reported on the data collection form shall match those reported in the schedule of findings and questioned costs and the applicable auditor's report. Depending on the IPA's classification of the finding, the finding reference number shall be followed by one of the following descriptions: "material weakness"; "significant deficiency"; "material non-compliance"; "other non-compliance"; or "other matters."

(a)

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

(b)

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

(c)

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

<p>(i) When auditors detect violations of law or good accounting practices that shall be reported per Section 12-6-5 NMSA 1978, but that do not rise to the level of significant deficiencies or material weaknesses, such findings are considered to warrant the attention of those charged with governance due to the statutory reporting requirement. The auditor shall communicate such violations in the “compliance and other matters” paragraph in the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards.</p>	<p>(i) 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);</p>	<p>audit requirements for federal awards at 2 CFR 200, Section 511-1).</p>
<p>(ii) Findings required by Section 12-6-5 NMSA 1978 shall be presented in a separate schedule of findings labeled “Section 12-6-5 NMSA 1978 findings”. This schedule shall be placed in the back of the audit report following the financial statement audit and federal award findings. Per AAG GAS 13.49 there is no requirement for such findings to be included or referenced in the uniform guidance compliance report.</p>	<p>(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);</p>	<p>(f) All audit reports shall include a summary of audit results preceding the presentation of audit findings (if any). The summary of audit results shall include the type of auditor report issued and whether the following categories of findings for internal control over financial reporting were identified: material weakness, significant deficiency, and material noncompliance. AUP reports completed pursuant to 2.2.2.16 NMAC are not required to include a summary of audit results.</p>
<p>(d) Each audit finding (including current year and unresolved prior-year findings) shall specifically state and describe the following:</p>	<p>(v) recommendation addressing each condition and cause; and</p>	<p>(2) Prior year findings:</p>
<p>(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 <i>for repeat findings, management’s progress or lack of progress towards implementing the prior year planned corrective actions</i>);</p>	<p>(vi) agency response (the agency’s comments about the finding, <i>including specific planned corrective actions with a timeline and designation of what employee position(s) are responsible for meeting the deadlines in the timeline</i>).</p>	<p>(a) IPAs shall comply with the requirements of GAGAS Section 6.11 relating to findings and recommendations from previous audits and attestation engagements. In addition, IPAs shall report the status of <i>all</i> prior-year findings and <i>all</i> 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.</p>
<p>(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);</p>	<p>(e) Uniform guidance regarding single audit findings (uniform guidance 200.511): The auditee is responsible for follow-up and corrective action on all audit findings. As a part of this responsibility, the auditee shall prepare a summary schedule of prior audit findings and a corrective action plan for current year audit findings in accordance with the requirements of uniform guidance 200.511. The corrective action plan and summary schedule of prior audit findings shall include findings relating to the financial statements which shall be reported in accordance with GAGAS. The summary schedule of prior year findings and the corrective action plan shall be included in the reporting package submitted to the federal audit clearinghouse (AAG GAS 13.49 fn 38). In addition to being included in the agency response to each audit finding, the corrective action plan shall be provided on the audited agency’s letterhead in a document separate from the auditor’s findings. (COFAR frequently asked questions on the office of management and budget’s uniform administrative requirements, cost principles, and</p>	<p>(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</p>
<p>(iii) effect (the logical link to establish</p>		

findings materially misrepresents the status of any prior audit finding (AAG GAS 13.53).

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

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

(5) If an agency has entered into any professional services contract with 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 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 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. The exit conference and presentation to governance shall occur in the forum agreed to by the agency and the

IPA, to include virtual or telephonic options. The OSA reserves the right to require an in-person exit conference and presentation to the board. The date of the exit conference(s) and the names and titles of personnel attending shall be stated in the last page of the audit report.

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

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

(4) Once the audit report is officially released to the agency by the state auditor (by a release letter) and the required waiting period of five calendar days has passed, unless waived by the agency in writing, the audit report shall be presented by the IPA, to a quorum of the governing authority of the agency at a meeting held in accordance with the Open Meetings Act, if applicable. This requirement only applies to agencies with a governing authority, such as a board of directors, board

of county commissioners, or city council, which is subject to the Open Meetings Act. The IPA shall ensure that the required communications to those charged with governance are made in accordance with AU-C 260.12 to 260.14.

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

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

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

(2) Pursuant to Section 12-6-6 NMSA 1978 (criminal violations), an agency or IPA shall notify the state auditor immediately, in writing, upon discovery of any alleged violation of a criminal statute in connection with financial affairs. If an agency or IPA has already

made a report to law enforcement that fact shall be included in the notification. The notification shall be sent by e-mail to reports@osa.state.nm, by facsimile, or by US mail. Notifications shall not be made through the fraud hotline. The notification shall include an estimate of the dollar amount involved and a complete description of the alleged violation, including names of persons involved and any action taken or planned. The state auditor may cause the financial affairs and transactions of the agency to be audited in whole or in part pursuant to Section 12-6-3 NMSA 1978 and 2.2.2.15 NMAC. If the state auditor does not designate an agency for audit, an agency shall follow the provisions of 2.2.2.15 NMAC when entering into a professional services contract for a special audit, performance audit 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 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 Subsection A of Section 6-10-16 NMSA 1978, "deposits of public money shall be secured by: securities of the United States, its agencies or instrumentalities; securities of the state of New Mexico, its agencies, instrumentalities, counties, municipalities or other subdivisions; securities, including student loans, that are guaranteed by the United States or the state of New Mexico; revenue bonds that are underwritten by a member of the financial industry regulatory authority (known as

FINRA), and are rated "BAA" or above by a nationally recognized bond rating service; or letters of credit issued by a federal home loan bank."

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

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

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

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

Q. Budgetary presentation:

(1) Prior year balance included in budget:

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

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

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

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

(a) If the budget structure for the general fund and major special revenue funds is similar enough to the GAAP fund structure to provide the necessary information, the basic financial statements shall include budgetary comparison statements 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 SI schedule or in a note to the financial statements. The accounting treatment of any unexpended balances shall be fully explained in the SI schedule or in a note to the financial statements. This is a special requirement of the state auditor and it does not apply to the statewide CAFR audit.

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

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

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 4 to appendix A to chapter 16 of AAG SLV regarding wording used when opining on budgetary statements on the GAAP basis. IPAs conducting audits under this rule shall follow the AICPA report examples. All independent auditor’s reports shall include a statement that the audit was performed in accordance with auditing standards generally accepted in the United States of America *and with applicable government auditing standards* per GAGAS 6.37. This statement shall be modified in

accordance with GAGAS 2.17b if some GAGAS requirements were not followed. Reports for single audits of fiscal years beginning on or after December 26, 2014 shall have references to OMB Circular A-133 replaced with references to Title 2 U.S. Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance 200.110(b), AAG GAS 4.89, Example 4-1).

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

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

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

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

(4) The state auditor requires the financial statements, RSI, SI, and other information required by this rule, and the following reports to be

included under one report cover: the independent auditor's report; the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards; and the report on compliance for each major federal program and on internal control over compliance required by the uniform guidance. If applicable, the independent auditor's report shall include the AU-C 725 opinion on SI, the schedule of expenditures of federal awards and the HUD 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 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) Any joint powers agreement (JPA) shall be listed in a 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 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. Tax increment development districts: Pursuant to Subsection C of Section 5-15-9 NMSA 1978, tax increment development districts (TIDDs) are political subdivisions of the state, and they are separate and apart from the municipality or county in which they are located. Section 5-15-10 NMSA 1978 states that the district shall be governed by the governing body that adopted a resolution to form the district or by a five-member board composed of four members appointed by that governing body; provided, however, that the fifth member of the five-member board is the secretary of finance and administration or the secretary's designee with full voting

privileges. However, in the case of an appointed board of directors that is not the governing body, at the end of the appointed directors' initial terms, the board shall hold an election of new directors by majority vote of owners and qualified resident electors. Therefore, a TIDD and its audit firm shall apply the criteria of GASBS 14, 39, 61, and 80 to determine whether the TIDD is a component unit of the municipality or county that approved it, or whether the TIDD is a related organization of the municipality or county that approved it. If the TIDD is determined to be a related organization per the GAAP requirements, then the TIDD shall contract separately for an audit separate from the audit of the municipality or county that approved it.

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

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

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

(b) Pursuant to AU-C 805.16, the PERA and ERB auditors shall each issue a separate auditor's report and express a separate opinion on the AU-C 805 audit performed (distinct from the agency's regular financial statement and compliance audit). Additionally, the auditor shall apply the procedures required by AU-C 725 to all supplementary information schedules included in the schedule of employer allocations report in order to determine whether the supplementary information is fairly stated, in all material respects, in relation to the financial statements as a whole. The

IPA shall include the supplementary information schedules in the related reporting in the other-matter paragraph pursuant to AU-C 725.09, regarding whether such information is fairly stated in all material respects in relation to the schedule of employer allocations as a whole.

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

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

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

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

Z. 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). Unaudited, but final, GASBS 77 disclosure information shall be provided to any agency whose tax revenues are affected by the reporting agency's tax abatement agreements no later than September 15 of the subsequent fiscal year. This due date does not apply if the reporting agency does not have any

tax abatement agreements that reduce the tax revenues of another agency. All tax abatement agreements entered into by an agency's component unit(s) shall be disclosed in the same manner as the tax abatement agreements of the primary government. If an agency determines that any required disclosure is confidential, the agency shall cite the legal authority for the determination.

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

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

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

(3) RHCA shall include note disclosures in the schedule of employer allocations report that detail each component

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

(4) 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 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.

(8) Stand-alone state agency financial statements that exclude the proportionate share of the collective OPEB liability of the state of New Mexico, shall include note disclosure

referring the reader to the statewide CAFR for the state's net OPEB liability and other OPEB-related information.

[2.2.2.10 NMAC - Rp, 2.2.2.10 NMAC, 3/10/2020]

2.2.2.11 [RESERVED]

[2.2.2.11 NMAC - Repealed 3/10/2020]

2.2.2.12 SPECIFIC

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

A. Pertaining to audits of state agencies:

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

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

(3) Accounts payable at year-end and reversion calculation: If goods and services were received (as defined by generally accepted accounting principles) by the end of the fiscal year but not paid for by the end of the fiscal year, an accounts payable shall be reported for the respective amount due in both the government-wide financial statements and the fund financial statements. The "actual" expenditures in the budgetary comparison exclude any accounts payable that were not paid timely and therefore require a request to the financial control division to pay prior year bills out of 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 2.2.2.12 NMAC. If the agency maintains a separate accounting system, it shall be reconciled with the SHARE system and all applicable adjustments shall be recorded in SHARE in the month in which the transactions occurred. DFA FCD provides guidance to agencies, which IPAs shall review, regarding policy and procedure requirements. These documents are available on the DFA FCD website and include:

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

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

Appropriation unit code/appropriation unit description	
200	personal services & employee benefits
300	contractual services
400	other
500	other financing uses
600	non-budgeted

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

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

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

(6) Reversions to state general fund:

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

(b) Subsection A of Section 6-5-10 NMSA 1978 states "all unreserved undesignated fund balances in

reverting funds and accounts as reflected in the central accounting system as of June 30 shall revert by September 30 to the general fund. The division may adjust the reversion within 45 days of release of the audit report for that fiscal year." Failure to transfer reverting funds timely in compliance with the statute requires an audit finding.

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

- (a) transfers; and
- (b) reimbursements (GASBS 34.410):
- (i) intra-agency transfers between funds within the agency shall offset (i.e. balance). Reasons for intra-agency transfers shall be fully explained in the notes to the financial statements. In the separate audit reports of state agencies, transfers between their internal funds are shown as other financing sources or uses in the fund financial statements and as transfers (that get eliminated) in the government-wide financial statements;
- (ii) inter-agency transfers (between an agency's internal funds and other funds of the state that are outside the agency such as state general fund

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

(c)

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

(i)

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

(ii)

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

(d)

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

(e)

Reimbursements are transfers between funds that are used

to reallocate the revenues and expenditures/expenses to the appropriate fund. Reimbursements are not reported as inter-fund activity in the financial statements.

(8)

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

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

(e)
Relating to capital expenditures by the New Mexico public school facilities authority (PSFA), school districts shall review capital expenditures made by PSFA for repairs and building construction projects of the school district. School districts shall also determine the amount of capital expenditures that shall be added to the capital assets of the school district and

account for those additions properly. The IPA shall test the school district capital asset additions for proper inclusion of these expenditures.

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

(4) Pertaining to charter schools:

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

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

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

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

(1) The first one is a “tax roll reconciliation of

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

(2) The second schedule titled "county treasurer's property tax schedule" shall show by property tax type and agency, the amount of taxes: levied; collected in the current year; collected to-date; distributed in the current year; distributed to-date; the amount determined to be uncollectible in the current year; the uncollectible amount to-date; and the outstanding receivable balance at the end of the fiscal year. This information is necessary for proper revenue recognition on the part of the county as well as on the part of the recipient agencies, under GASBS 33. If the county does not have a system set up to gather and report the necessary information for the property tax schedule, the IPA shall issue a finding.

E. Pertaining to audits of educational institutions:

(1)

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

(2)

Budgetary comparisons: the legal level of budgetary control per 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 2.2.2.10 NMAC. Additionally:

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

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

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

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

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

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

(a) relating to consultants: the name of the firm or individual, the location of the consultant (in-state or out-

of-state), a brief description of investments subject to the agreement, and fees;

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

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

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

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

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

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

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

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

[2.2.2.12 NMAC, Rp, 2.2.2.12 NMAC, 3/10/2019]

2.2.2.13 REVIEW OF AUDIT REPORTS AND AUDIT DOCUMENTATION:

A. Statutory requirement to review audit reports: Subsection B of Section 12-6-14 NMSA 1978 requires the state auditor or personnel of his office designated by him examine all reports of audits of agencies made pursuant to contract. All audits performed under contracts approved by the state auditor are subject to review. The OSA shall review all reports submitted by the IPA to determine if the reports are presented in accordance with the requirements of this rule and applicable auditing, accounting and financial reporting standards. The OSA shall review all audit reports submitted by the report due date before reviewing reports that are submitted after the report due date. As discussed in Subsection B of 2.2.2.9 NMAC, audit reports reissued by the agency and IPA, pursuant to AU-C 560, are also subject to OSA review procedures.

B. Comprehensive reviews: Released audit reports are subject to a comprehensive report and audit documentation review by the state auditor. The IPA’s audit documentation shall be assembled in one complete file or one complete set of files in one location, whether the documentation is hardcopy or electronic. The documentation shall be either all hardcopy or all electronic. OSA reviews of audit and AUP working papers include inspection of firm documentation related to compliance with governmental auditing, accounting and financial reporting standards, rules and other requirements issued by GASB, AICPA, GAO, and the OSA.

C. Consequences of deficiencies: If during the course of its review of an audit report or the related audit documentation, the OSA finds significant deficiencies that warrant a determination that the audit was not made in accordance with the provisions of

the contract or applicable standards and requirements, any or all of the following action(s) may be taken;

(1) the IPA may be required by OSA to correct the deficiencies in the report or audit documentation, and reissue the audit report to the agency and any others receiving copies;

(2) the IPA's eligibility to perform future engagements may be limited in number or type of engagement pursuant to Subsection D of 2.2.2.8 NMAC;

(3) for future audit reports, for some or all audit contracts, the IPA may be required to submit working papers with the audit 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.

D. Results of work paper reviews: After the review is completed, the OSA shall issue a letter to advise the IPA about the results of the review. The IPA shall respond in writing to all review comments when directed. If the firm disagrees with any comments, the firm shall provide references to professional standards supporting the firm's disagreement. Failure to respond shall be noted during the firm profile review process. [2.2.2.13 NMAC - Rp, 2 2.2.13 NMAC, 3/10/2020]

2.2.2.14 CONTINUING PROFESSIONAL EDUCATION AND PEER REVIEW REQUIREMENTS:

A. Continuing professional education: IPAs shall ensure that all members of their staff comply with the CPE requirements of the most recent revision of GAGAS. Accordingly, each auditor performing work in accordance with GAGAS, except for nonsupervisory auditors who charge less than 40 hours of their time annually to GAGAS engagements per GAGAS 4.26, shall complete, every two years, at least 24 hours of CPE that directly relates to

government auditing, the government environment, or the specific or unique environment in which the audited agency operates. Auditors, including internal specialists pursuant to GAGAS 4.31, who are involved in planning, directing, or reporting on GAGAS audits and auditors who are not involved in those activities but charge twenty percent or more of their time annually to GAGAS audits shall also obtain at least an additional 56 hours of CPE that enhances the auditor's professional expertise to conduct engagements.

B. Peer review requirements: IPAs shall comply with the requirements of the most recent revision of GAGAS relating to quality control and assurance and external peer review.

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

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

- (a) the peer review report for the auditor's firm;
 - (b) if applicable, detailed descriptions of the findings, conclusions and recommendations related to deficiencies or significant deficiencies required by GAGAS 5.91;
 - (c) if applicable, the auditor's response to deficiencies or significant deficiencies;
 - (d) the letter of acceptance from the peer review program in which the firm is enrolled; and
 - (e) a list of the governmental audits reviewed during the peer review.
- (3) A peer review rating of "failed" on the

auditor's peer review shall disqualify the IPA from performing New Mexico governmental audits.

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

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

(6) The New Mexico public accountancy board's substantial equivalency provision has been replaced with mobility pursuant to the 1999 Public Accountancy Act (61-28B NMSA 1978). If a CPA is performing any type of attest work subject to this rule, his firm shall maintain a New Mexico firm permit.

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

C. State auditor quality control reviews: The state auditor performs its own quality control review of IPA audit reports and working papers. An IPA that is included on the state auditor's list of approved firms for the first time 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). When the result of the state auditor's quality control review differs significantly from the external quality control report and corresponding peer review rating, the state auditor may no longer accept external peer review reports performed by that reviewer. In making this determination, the state auditor shall take into consideration the fact that AICPA peer reviews are performed on a risk-based or key-element approach looking for systemic problems, while the state auditor reviews are engagement-

specific reviews.

[2.2.2.14 NMAC - Rp, 2.2.2.14 NMAC, 3/10/2020]

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) Confidentiality of sources: The identity of a person making a report and associated allegations made directly to the state auditor orally or in writing, or telephonically or in writing through the state auditor's fraud hotline or website, or through any other means, alleging financial fraud, waste, or abuse in government is confidential audit information and may not be disclosed, except as required by Section 12-6-6 NMSA 1978.

(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 by the agency, 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 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, 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 (Sections 13-1-28 through 13-1-199 NMSA 1978), or equivalent home rule procurement provisions when selecting an IPA or team to perform the engagement;

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

(i) a completed template for special audits, attestation engagements, performance audits or forensic audits, provided at 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, with all required signatures on the contract.

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

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

(5) Recommendation rejections: In the event the agency's recommendation is not approved by the state auditor, the state auditor shall promptly communicate the decision, including the reason(s) for rejection, to the agency, at which time the agency shall promptly submit a different recommendation. This process

shall continue until the state auditor approves a recommendation and related contract. During this process, whenever a recommendation and related contract are not approved, the agency may submit a written request to the state auditor for reconsideration of the disapproval. The agency shall submit its request no later than 15 calendar days from the date of the disapproval and shall include documentation in support of its recommendation. If warranted, after review of the request, the state auditor may hold an informal meeting to discuss the request. The state auditor shall set the meeting in a timely manner with consideration given to the agency's circumstances.

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

(7) Access to records and documents: For any special audit, attestation engagement, performance audit or forensic 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. The date of the exit conference(s) and the names and titles of personnel attending shall be stated on the last page of the special audit report.

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

(10) Report review: As required by Section 12-6-14 NMSA 1978, the state auditor shall review reports of any special audit, attestation engagement, performance audit 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. An electronic version of the report, in the PDF format described at Subsection B of 2.2.2.9 NMAC, shall be delivered to the state auditor within five business days. The state auditor shall not release the report until all the required documents are received by the state auditor. The state auditor shall provide the agency with a letter authorizing the release of the report pursuant to Section 12-6-5 NMSA 1978. Agency and local public body personnel shall not release information to the public relating to the special audit, attestation engagement, performance audit 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 2.2.2.15 NMAC, at all times during the engagement and after the engagement report becomes a public record, the IPA or other professional(s) shall not disclose to the public confidential information about the auditee or about the engagement. Confidential information is information that is not generally known to the public through common means of providing public information like the news media and internet.

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

(13) Payment: Progress payments up to (but not including) ninety-five percent of the contract amount do not require state auditor approval and may be made

by the agency if the agency monitors the progress of the services procured. If requested by the state auditor, the agency shall provide a copy of the approved progress billing(s). Final payments of ninety-five percent and above may be made by the agency pursuant to either of the following:

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

C. Agency-initiated special audits, 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 2.2.2.15 NMAC. For purposes of this rule, the term "special audit, attestation engagement, performance audit or forensic audit" includes, without limitation, 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 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, 3/10/2020]

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

A. Annual revenue and state funded capital outlay expenditures determine type of financial reporting: All local public bodies shall comply with the requirements of Section 6-6-3 NMSA 1978. Pursuant to Section 12-6-3 NMSA 1978, the annual revenue of a local public body determines the type of financial reporting a local public body shall submit to the OSA. Local public bodies are mutual domestic water consumers associations, land grants, incorporated municipalities, and special districts.

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

(a)

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

(b)

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

(2)

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

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

(1)

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

provided in Subsection C of 2.2.2.16 NMAC;

(2)

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

(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 AUP engagement in accordance with the audit contract for a tier three AUP engagement;

(4)

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

(5)

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

(6)

if a local public body's annual revenue is two hundred-fifty thousand dollars (\$250,000) or greater, but less than five hundred thousand dollars (\$500,000), the local public body shall procure services of an IPA for the performance of a tier six AUP engagement in accordance with the audit contract for a tier six AUP engagement;

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

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

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

- (1) the local public body’s annual revenue for the fiscal year; and
- (2) that the local public body did not expend fifty percent of or the remainder of a single capital outlay award during the fiscal year.
- (3) The OSA will not accept the certification of exemption from financial reporting for the current year until the prior year certifications or AUP reports (whichever is appropriate) have been submitted.

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

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

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

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

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

(3) The IPA shall hold an entrance conference and an exit conference with the local public body 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 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. 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.

G. Progress payments:

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

(2) Final payments from ninety-five percent to one hundred percent may be made by the local public body pursuant to either of the following:

- (a) stated in the letter accompanying the release of the report to the agency, or
- (b) in the case of ongoing law enforcement investigations, stated in a letter prior to the release of the report to the agency. In this situation a letter releasing the report to the agency will be issued when it is appropriate to release the report.

H. Report due dates, notification letters and confidentiality:

(1) For local public bodies with a June 30 fiscal year-end that qualify for the tiered system, the report or certification due date is December 15. Local public bodies with a fiscal year end other than June 30 shall submit the AUP report or certification no later than five months after the fiscal year-end. Late AUP reports (not the current

reporting period) are due not more than six months after the date the contract was executed. An organized bound hard copy of the report shall be submitted to the OSA. AUP reports submitted via fax or email shall not be accepted. A copy of the signed dated management representation letter shall be submitted with the report. If a due date falls on a weekend or holiday, or if the OSA is closed due to inclement weather, the report is due the following business day by 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 AUP report be submitted after the applicable due date, the auditor shall notify the state auditor of the situation in writing. This notification shall consist of a letter, not an email. However, a scanned version of the official letter sent via email is acceptable. The late AUP notification letter is subject to the confidentiality requirements detailed at Subsection M of 2.2.2.10 NMAC. This does not prevent the state auditor from notifying the legislative finance committee or applicable oversight agency pursuant to Subsections F and G of Section 12-6-3 NMSA 1978. There shall be a separate notification for each late AUP report. The notification shall include a specific explanation regarding why the report will be late, when the IPA expects to submit the report and a concurring signature by the local public body. If the IPA will not meet the expected report submission date, then the IPA shall send a revised notification letter. In the event the contract was signed after the report due date, the notification letter shall still be submitted to the OSA explaining the reason the AUP report will be submitted after the report due date. The late report notification letter is not required if the report was

submitted to the OSA for review by the deadline, and then rejected by the OSA, making the report late when resubmitted.

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

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

J. Review of AUP reports and related workpapers: AUP shall be reviewed by the OSA for compliance with professional standards and the professional services contract. Noncompliant reports shall be rejected and not considered received. Such reports shall be returned to the firm and a copy of the rejection letter shall be sent to the local public body. If the OSA rejects and returns an AUP report to the IPA, the report shall be corrected and resubmitted to the OSA by the due date, or the IPA shall include a finding for non-compliance with the due date. The IPA shall submit an electronic version of the corrected rejected report for OSA review. The name of the electronic file shall be "corrected rejected report" followed by the agency name and fiscal year. The OSA encourages early submission of reports to avoid findings for late reports. After its review of the AUP report for compliance with professional standards and the professional services contract, the OSA shall authorize the IPA to print and submit

the final report. An electronic excel version of the findings summary form and an electronic version of the AUP report, in PDF format as described at Subsection B of 2.2.2.9 NMAC, shall all be delivered to the OSA within five business days. The OSA shall not release the AUP report until the electronic version of the report is received by the OSA. The OSA shall provide the local public body with a letter authorizing the release of the report after the required five day waiting period. Released reports may be selected by the OSA for comprehensive report and workpaper reviews. After such a comprehensive report and workpaper review is completed, the OSA shall issue a letter to advise the IPA about the results of the review. The IPA shall respond to all review comments as directed. If during the course of its review, the OSA finds significant deficiencies that warrant a determination that the engagement was not performed in accordance with provisions of the contract, applicable AICPA standards, or the requirements of this rule, any or all of the following action(s) may be taken:

(1) the IPA may be required to correct the deficiencies in the report or audit documentation, and reissue the AUP report to the agency and any others receiving copies;

(2) the IPA's eligibility to perform future engagements may be limited in number or type of engagement pursuant to Subsection D of 2.2.2.8 NMAC;

(3) for future reports, for some or all contracts, the IPA may be required to submit working papers with the reports for review by the OSA prior to the release of the report; or

(4) the IPA may be referred to the New Mexico public accountancy board for possible licensure action.

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

December 2018 revision, issued by the US-GAO (GAGAS 3.17-3.108). [2.2.2.16 NMAC - Rp. 2.2.2.16 NMAC, 3/10/2020]

HISTORY of 2.2.2 NMAC:

Pre-NMAC Regulatory Filing History: The material in this part was derived from that previously filed with the State Records Center and Archives under SA Rule No. 71-1, Regulations of State Auditor Relating to Audit Contracts with Independent Auditors by State Agencies, filed 5/14/1971; SA Rule No. 71-2, Regulations of State Auditor for Audits by Independent Auditors, filed 5/27/1971; SA Rule No. 72-1, Regulations of State Auditor Relating to Audit Contracts With Independent Auditors by Agencies of the State of New Mexico, filed 6/1/1972; SA Rule No. 72-2, Regulations of State Auditor for Audits by Independent Auditors, filed 6/1/1972; SA Rule No. 74-1, Regulations of State Auditor Relating to Reporting Statutory Violations, filed 2/28/1974; SA Rule No. 74-2, Rotation of Assignments, filed 2/28/1974; SA No. 78-1, Regulations Governing the Auditing of New Mexico Governmental Agencies, filed 11/3/1978; Amendment No. 1 to SA Rule 78-1, Regulations Governing the Auditing of New Mexico Governmental Agencies, filed 5/28/1980; SA Rule No. 82-1, Regulation Governing the Auditing of New Mexico Governmental Agencies, filed 12/17/1982; SA Rule No. 84-1, Regulations Governing the Auditing of Agencies of the State of New Mexico, filed 4/10/1984; SA Rule No. 85-1, Regulations Governing the Auditing of Agencies of the State of New Mexico, filed 1/28/1985; SA Rule No. 85-3, Regulation for State Agencies Concerning NCGA Statement No. 4 - Accounting and Financial Reporting Principles for Claims and Judgements and Compensated Absences, filed 4/16/1980; SA Rule No. 85-4, Regulations Governing the Auditing of Housing Authorities of the State of New Mexico, filed 6/12/1985; SA Rule No. 85-5, Regulations Pertaining

to Single Audits of State Agencies and Local Public Bodies, filed 6/17/1985; SA Rule No. 85-6, Audits of Grants to Subrecipients, filed 6/17/1985; SA Rule 86-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 1/20/1986; SA Rule No. 86-2, Regulation Governing Violations of Criminal Statutes in Connection with Financial Affairs, filed 3/20/1986; SA Rule No. 86-3, Professional Services Contracts, filed 7/9/1986; SA Rule 87-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2/13/1987; SA Rule 87-2, Approval of Audit Contracts, filed 4/2/1987; SA Rule 87-3, Audit Requirements for Deferred Compensation, Retirement Plans, Budget and Public Money for the State of New Mexico, filed 8/14/1987; SA Rule 88-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2/10/1988; SA Rule 89-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3/10/1989; SA Rule 90-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3/1/1990; SA Rule 90-3, Auditor's Responsibilities Related to Fees Collected on Convictions Relating to Intoxicating Liquor and Controlled Substances, filed 5/7/1990; SA Rule 91-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3/13/1991; SA Rule 92-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3/6/1992; SA Rule 93-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2/25/1993; SA Rule 94-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2/25/1994; Amendment 1 to SA Rule 94-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 5/16/1994; SA Rule 95-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3/16/1995; and 2 NMAC 2.2, Requirements for Contracting and Conducting Audits of Agencies, filed 4/2/1996.

History of Repealed Material:

2 NMAC 2.2, Requirements for Contracting and Conducting Audits of Entities - Repealed, 3/30/2001.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 3/29/2002.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 4/30/2003.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 3/31/2004.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 5/13/2005.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 3/16/2006.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 4/16/2007.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 4/15/2008.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 2/27/2009.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 2/12/2010.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 2/28/2011.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 2/15/2012.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 2/28/2013.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 2/28/2014.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 3/16/2015.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 3/15/2016.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 3/14/2017.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 2/27/2018.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 3/10/2020.

Other History:

2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities, filed 2/15/2018, is replaced by 2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities, effective 3/10/2020.

**ENVIRONMENT
DEPARTMENT
WATER QUALITY CONTROL
COMMISSION**

The Secretary of the New Mexico Environment Department approved by Order on February 14, 2020, to repeal rule 20.7.7 NMAC, Review Procedures for Wastewater Construction Loans, adopted 7/16/2000, and replace it with 20.7.7 NMAC Review Procedures Wastewater Construction Loans, adopted on 2/14/2020 and effective on 3/10/2020.

**ENVIRONMENT
DEPARTMENT
WATER QUALITY CONTROL
COMMISSION**

**TITLE 20 ENVIRONMENTAL
PROTECTION
CHAPTER 7 WASTEWATER
AND WATER SUPPLY
FACILITIES
PART 7 REVIEW
PROCEDURES FOR
WASTEWATER
CONSTRUCTION LOANS**

20.7.7.1 ISSUING

AGENCY: New Mexico Environment Department.
[20.7.7.1 NMAC – Rp, 20.7.7.1 NMAC, 3/10/2020]

20.7.7.2 SCOPE: These procedures apply to all construction or planning/design projects funded in-part from the Wastewater Facilities Construction Loan Fund which is derived from the federal capitalization grant except as provided in Section 11 of 20.7.7 NMAC.

[20.7.7.2 NMAC – Rp, 20.7.7.2 NMAC, 3/10/2020]

20.7.7.3 STATUTORY

AUTHORITY: Department of Environment Act, Subsection D of Section 9-7A-6 NMSA 1978; Wastewater Facility Construction Loan Act, Sections 74-6A-1 to 15 NMSA 1978; and Water Quality Act, NMSA 1978, Sections 74-6-1 to 17.
[20.7.7.3 NMAC – Rp, 20.7.7.3 NMAC, 3/10/2020]

20.7.7.4 DURATION:

Permanent.
[20.7.7.4 NMAC – Rp, 20.7.7.4 NMAC, 3/10/2020]

20.7.7.5 EFFECTIVE

DATE: March 10, 2020. This Part amends and replaces the Environmental Review Procedures for Projects Funded Through the Wastewater Facility Construction Loan Program, HED 88-3 (EID), filed September 22, 1988, as amended.

A. All references to HED 88-3 (EID) or to the Review Procedures for Projects Funded through the Wastewater Facility Construction Loan Program in any other rule shall be construed as a reference to this Part.

B. The amendment and replacement of HED 88-3 (EID) shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any financial assistance provided pursuant to HED 88-3 (EID).

[20.7.7.5 NMAC – Rp, 20.7.7.5 NMAC, 3/10/2020]

20.7.7.6 OBJECTIVE:

This Part establishes the New Mexico Environment Department's policy and procedures for the identification and analysis of the environmental impacts of construction of wastewater facilities funded in-part through loans from the Wastewater Facility Construction Loan Fund (which is New Mexico's SRF) and the preparation and processing of Environmental Impact Statements (EISs). This procedure shall be coordinated with and shall be consistent with NMED's environmental review responsibilities pursuant to the Governor's Executive

Order 83-73, "State Clearinghouse Review Process."

[20.7.7.6 NMAC – Rp, 20.7.7.6 NMAC, 3/10/2020]

20.7.7.7 DEFINITIONS:

All terminology used in this Part will be consistent with the terms as defined in 40 CFR Part 1508 (the CEQ Regulations) except as provided in this Part.

A. "Applicant"

means any state agency or other qualified borrower, which has filed an application for loan assistance from the SRF.

B. "Environmental Information Document" (EID) means any written analysis prepared by an applicant or contractor describing the environmental impacts of a proposed project. This document will be of sufficient scope to enable the responsible official to assess the environmental impacts of the proposed project;

C. "Department" or "NMED" means the New Mexico environment department.

D. "Environmental review" means the process whereby an evaluation is undertaken by NMED to determine whether a proposed project may have a significant impact on the environment and therefore require the preparation of an Environmental Impact Statement (EIS);

E. "Loan" means a loan of funds by a written loan agreement from the SRF;

F. "Planning/design loan" means a loan which is issued for the purpose of preparation of a plan (including environmental review process) or preparation of design drawings and specifications for a potential construction project.

G. "Project" means a construction project which receives a loan for the purpose of building a publicly owned treatment works (POTW) or other eligible works.

H. "Record of Decision" (ROD) means a document prepared and issued by the NMED responsible official on the Environmental Impact Statement

(EIS) which includes an identification of mitigation measures.

I. “Responsible Official” means the Secretary of the department who is authorized to fulfill the requirements of these procedures. The Chief of the Construction Programs Bureau is delegated the day-to-day responsibilities for implementing these procedures.

J. “SRF” means the state revolving loan fund as established by the Wastewater Facility Construction Loan Act.

K. “State agency” means an agency or department of the New Mexico executive branch of government.
[20.7.7.7 NMAC – Rp, 20.7.7.7 NMAC, 3/10/2020]

20.7.7.8 BACKGROUND:

A. On June 10, 2014, the President signed into law the Water Resources Reform and Development Act of 2014. The U.S. Environmental Protection Agency (EPA) issued on September 18, 2014, Interpretive Guidance for Certain Amendments in the Water Resources Reform and Development Act to Titles I, II, V, and VI of the Federal Water Pollution Control Act (FWPCA). Section 5002 states the following: All CWSRF-funded projects involving the construction of treatment works, regardless of the source of the funding must undergo an environmental review. The [EPA] has consistently interpreted the statement “with assistance made available by a State water pollution control revolving fund authorized under this title” to mean that the specific requirement identified applies to all CWSRF-funded projects, not just equivalency projects. Consistent with this prior interpretation, any project that is considered a “treatment work” as defined in the FWPCA section 212, now incorporated in FWPCA Section 502(26), must comply with the FWPCA 511(c)(1) regardless of which eligibility it is funded under (see section 603(c)). A state may choose to apply its own “NEPA-like” state environmental review process for complying with the FWPCA 511(c)(1)

provided that the elements in 40 CFR 35.3140(b)(1) through (5) are met.

B. The department, pursuant to Section 9-7A-6 NMSA 1978, revised and adopted the procedures as outlined at 40 CFR Part 6 - Procedures for Implementing the Requirements of the Council on Environmental Quality on the National Environmental Policy Act of 1969 (NEPA).

C. NMED is authorized by Subsection A of Section 74-6A-4 NMSA 1978 of the Wastewater Facility Construction Loan Act to establish and administer a program to make loans to state agencies and other qualified borrowers for construction or modification of wastewater facilities. In carrying out this responsibility, the Secretary of the department has adopted policies, requirements, procedures, and guidelines for administration of the SRF which includes the primary responsibility for conducting environmental reviews and evaluations of SRF projects. Legal remedies available to the public to challenge environmental review determinations and enforcement pursuant to this procedure are provided by appeal by an aggrieved party(s) of the determination or action through administrative channels to higher authorities within NMED.

D. The New Mexico Water Quality Act, Sections 74-6-1 to 17 NMSA 1978, created the Water Quality Control Commission (WQCC) which is the state water pollution control agency for all purposes of the federal Clean Water Act, as amended. The WQCC may take all action necessary and appropriate to secure to New Mexico and its political subdivisions the benefits of the federal act. The Water Quality Act identifies legal remedies available to it and its constituent agencies (including NMED) in enforcement of its regulations, and legal remedies available to the public regarding implementation of programs covered by the Water Quality Act which includes the SRF.
[20.7.7.8 NMAC – Rp, 20.7.7.8 NMAC, 3/10/2020]

20.7.7.9 CONSTRUCTION:

This Part shall be liberally construed to carry out the purposes of the Act. If any provision or application of this Part is held invalid, the remainder or its application to other situations or persons shall not be affected.
[20.7.7.9 NMAC – Rp, 20.7.7.9 NMAC, 3/10/2020]

20.7.7.10 COMPLIANCE WITH OTHER REGULATIONS:

Compliance with this Part does not relieve a person from the obligation to comply with other applicable state and federal regulations.
[20.7.7.10 NMAC – Rp, 20.7.7.10 NMAC, 3/10/2020]

20.7.7.11 OVERVIEW:

The process for conducting an environmental review of wastewater facility construction projects includes the following steps.

A. Consultation.
The applicant is encouraged to consult with NMED early in project formulation or the facilities planning stage to determine whether a project is eligible for a categorical exclusion from the remaining substantive environmental review requirements of these procedures, to determine alternatives to the proposed project for evaluation, to identify potential environmental issues, and to determine the potential need for partitioning the environmental review process or the need for an Environmental Impact Statement (EIS).

B. Determining categorical exclusion eligibility. At the request of an applicant, NMED will determine if a project is eligible for a categorical exclusion in accordance with the submission of a loan application and other documents submitted to NMED to substantiate the request.

C. Documenting environmental information. If the project is determined to be ineligible for a categorical exclusion, or if no request for a categorical exclusion is made, the potential applicant subsequently prepares an Environmental Information Document (EID) for the project.

D. In the event that the proposed action is of a limited nature, but does not qualify for a categorical exclusion, and that an EID had been approved previously by the EPA or NMED for wastewater facilities, the responsible official may determine to what extent updated information may suffice to provide the requisite environmental review of the project.

E. Assessing environmental impacts. NMED reviews the EID, prepares an environmental assessment (EA), and based upon an assessment of the environmental impacts of the proposed project NMED:

(1) Prepares and issues a Finding of No Significant Impact (FONSI); or

(2) Prepares or issues a Notice of Intent to prepare an original or supplemental EIS and Record of Decision (ROD).

F. Monitoring. The construction and post-construction operation and maintenance of the facilities are monitored to ensure implementation of mitigation measures identified in the FONSI or ROD.

[20.7.7.11 NMAC – Rp, 20.7.7.11 NMAC, 3/10/2020]

20.7.7.12 CONSULTING DURING THE PRELIMINARY ENGINEERING PROCESS:

The responsible official shall initiate the environmental review process early to identify environmental effects, avoid delays, and resolve conflicts. The environmental review process should be integrated throughout the preliminary engineering process. Potential applicants should consult with NMED early in the preliminary engineering process. The consultation should be conducted during the evaluation of project alternatives prior to the selection of a preferred alternative, to assist in resolving any identified environmental problems. [20.7.7.12 NMAC – Rp, 20.7.7.12 NMAC, 3/10/2020]

20.7.7.13 COORDINATION WITH OTHER ENVIRONMENTAL REVIEW AND CONSULTATION REQUIREMENTS:

Pertinent laws, regulations, or executive orders should be included in a coordinated environmental review effort as outlined in the NMED Construction Programs Bureau State Environmental Review Process (SERP), EPA' general terms and conditions of the grant, and the EPA CWSRF guidance.

[20.7.7.13 NMAC – Rp, 20.7.7.13 NMAC, 3/10/2020]

20.7.7.14 REVIEW OF COMPLETED PRELIMINARY ENGINEERING REPORTS:

NMED shall review the completed preliminary engineering reports (PER) and EID in the development of alternatives and the selection of a preferred alternative. An adequate EID shall be an integral part of planning submitted to NMED. The EID shall be of sufficient scope to enable the responsible official to make determinations on requests for partitioning the environmental review process and for preparing an environmental assessment (EA).

[20.7.7.14 NMAC – Rp, 20.7.7.14 NMAC, 3/10/2020]

20.7.7.15 ENVIRONMENTAL ASSESSMENT:

The environmental assessment process shall cover all potentially significant environmental impacts. NMED personnel shall assess environmental impacts before PER approval. The EID shall address all elements in 40 CFR Part 6 and follow the SERP. In minimizing the adverse effects of the proposed action:

A. Structural and nonstructural measures, directly or indirectly related to the facilities plan, to mitigate or eliminate adverse effects on the human and natural environments shall be identified during the environmental review. Among other measures, structural provisions include changes in facility design, size, and location; nonstructural provisions include staging facilities, monitoring and

enforcement of environmental regulations, and local commitments to develop and enforce land use regulations.

B. NMED shall not accept a PER, nor approve loan assistance for its implementation, if the applicant has not made, or agreed to make, changes in the project, in accordance with determinations made in a FONSI or the ROD for an EIS. NMED shall condition a loan or seek other ways to ensure that the applicant will comply with such environmental review determinations.

[20.7.7.15 NMAC – Rp, 20.7.7.15 NMAC, 3/10/2020]

20.7.7.16 FONSI/EID DETERMINATION:

The responsible official shall apply the criteria under Section 19 of 20.7.7 NMAC to the following:

- A.** A complete PER;
- B.** The EID; and
- C.** Other

documentation deemed necessary by the responsible official adequate to make an EIS determination by NMED. Following an independent environmental review of the projects, the responsible official shall document in writing the reasons for his determination to issue a FONSI or to prepare an EIS. The responsible official's determination to issue a FONSI or to prepare an EIS shall constitute final department action.

[20.7.7.16 NMAC – Rp, 20.7.7.16 NMAC, 3/10/2020]

20.7.7.17 PARTITIONING THE ENVIRONMENTAL REVIEW PROCESS:

- A.** Purpose.

Under certain circumstances, the building of a component/portion of a wastewater treatment system may be justified in advance of completing all environmental review requirements for the remainder of the system(s). When there are overriding considerations of cost or impaired program effectiveness the responsible official may approve a loan for a discrete component of a complete wastewater treatment system(s). The process of partitioning

the environmental review for the discrete component shall comply with the criteria and procedures described in subsection (B) of this section. In addition, all reasonable alternatives for the overall wastewater treatment works system(s), of which the component is a part, shall have been previously identified and each part of the environmental review for the remainder of the overall facilities plan shall comply with all requirements under Sections 14 and 15 of 20.7.7 NMAC.

B. Criteria for partitioning. The project component must:

- (1) Immediately remedy a severe public health, water quality, or other environmental problem;
- (2) Not foreclose any reasonable alternatives identified for the overall wastewater treatment works system(s);
- (3) Not cause significant adverse direct or indirect environmental impacts including those which cannot be acceptably mitigated without completing the entire wastewater treatment system of which the component is a part; and
- (4) Not be highly controversial.

C. Request for partitioning. The applicant's request for partitioning must contain the following:

- (1) A description of the discrete component proposed for construction before completing the environmental review of the entire facilities plan;
- (2) How the component meets the above criteria;
- (3) The environmental information required by Sections 14 and 15 of 20.7.7 NMAC for the component; and
- (4) Any preliminary information that may be important to NMED in an EA determination for the entire facilities plan.

D. Approval of requests for partitioning. The responsible official shall:

(1) Review the request for partitioning against all requirements of this procedure;

(2) If approvable, prepare and issue a FONSI;

(3) Include a loan condition prohibiting the building of additional or different components of the entire facilities plan for which the environmental review is not complete.

[20.7.7.17 NMAC – Rp, 20.7.7.17 NMAC, 3/10/2020]

20.7.7.18 FINDING OF NO SIGNIFICANT IMPACT (FONSI) DETERMINATION:

A. Criteria for producing and distributing a FONSI. If, after completion of the EA, NMED determines that an EIS will not be required, the responsible official shall issue a FONSI. The FONSI will be based on NMED independent review of the EID and any other environmental information deemed necessary by the responsible official, consistent with the requirements of Sections 14 and 15 of 20.7.7 NMAC. The FONSI shall list mitigation measures necessary to make the recommended alternative environmentally acceptable.

B. Proceeding with loan agreement.

(1) Once the issued FONSI becomes effective for the project, after a 30 day public comment period construction may proceed unless the responsible official determines that the project or environmental conditions have changed significantly from that which underwent environmental review.

(2) For an EID five or more years old, the responsible official shall re-evaluate the project, environmental conditions, and public views, and, prior to approval of loan agreement, either:

- (a) Reaffirm - issue a public notice reaffirming the original environmental determination to proceed with the project without revising the EID;
- (b) Supplement - require an update of the

EID, issue and distribute a revised FONSI with the necessary public notice or

(c) Reassess - withdraw the FONSI and publish a notice of intent to produce an EIS, followed by the preparation, issuance, and distribution of the EIS and ROD.

C. Revisions to the Project.

(1) Statement of Findings. If the project scope of work is revised after FONSI has been issued, but the revision is determined by NMED to be a minor revision, NMED shall issue a Statement of Findings (SOF) documenting the reason for the revision and its impact, if any, on the environment. The SOF shall be distributed to parties who previously indicated interest in the project environmental review process.

(2) Amendment. If the project scope of work is revised after a FONSI has been issued, but the revision is determined by NMED to be significant, NMED shall issue an amendment to the FONSI with proper public notification as identified in Section 23 of 20.7.7 NMAC and shall provide for a public meeting to discuss the amendment.

[20.7.7.18 NMAC – Rp, 20.7.7.18 NMAC, 3/10/2020]

20.7.7.19 CRITERIA FOR INITIATING ENVIRONMENTAL IMPACT STATEMENTS:

Conditions requiring an EIS. The responsible official shall assure that an EIS will be prepared and issued when it is determined that the proposed project will cause any of the following conditions to exist, or when:

A. The proposed action would result in a discharge of treated effluent from a new or modified existing facility into a body of water and the discharge is likely to have a significant effect on the quality of the receiving waters.

B. The proposed action is likely to directly, or through induced development, have significant adverse effect upon local ambient air quality or local ambient noise levels.

C. The proposed action is likely to have significant adverse effects on surface water reservoirs or navigation projects.

D. The proposed action would be inconsistent with state or local government, or federally-recognized Indian tribe approved land use plans or regulations, or federal land management plans.

E. The proposed action would be inconsistent with state or local government, or federally-recognized Indian tribe environmental, resource-protection, or land-use laws and regulations for protection of the environment.

F. The proposed action is likely to significantly affect the environment through the release of radioactive hazardous or toxic substances, or biota.

G. The proposed action involves uncertain environmental effects or highly unique environmental risks that are likely to be significant.

H. The proposed action is likely to significantly affect national natural landmarks or any property on or eligible for the National Register of Historic Places.

I. The proposed action is likely to significantly affect environmentally important natural resources such as wetlands, significant agricultural lands, aquifer recharge zones, coastal zones, barrier islands, wild and scenic rivers, and significant fish or wildlife habitat.

J. The proposed action in conjunction with related federal, state or local government, or federally-recognized Indian tribe projects is likely to produce significant cumulative impacts.

K. The proposed action is likely to significantly affect the pattern and type of land use (industrial, commercial, recreational, residential) or growth and distribution of population including altering the character of existing residential areas. [20.7.7.19 NMAC – Rp, 20.7.7.19 NMAC, 3/10/2020]

20.7.7.20 ENVIRONMENTAL IMPACT STATEMENT (EIS) PREPARATION:

A. Steps in preparing the EIS. In addition to the other requirements specified in this procedure, the responsible official will conduct the following activities:

(1) Notice of intent. If a determination is made that an EIS will be required, the responsible official shall prepare and distribute a notice of intent.

(2) Scoping. As soon as possible, after the publication of the notice of intent, the responsible official will convene a meeting of affected federal, state, and local agencies, or affected Indian tribes, the applicant and other interested parties to determine the scope of the EIS. As part of the scoping meeting, NMED will, as a minimum:

(a) Determine the significance of issues for and the scope of those significant issues to be analyzed in depth in the EIS;

(b) Identify the preliminary range of alternatives to be considered;

(c) Identify potential cooperating agencies and determine the information or analyses that may be needed from cooperating agencies or other parties;

(d) Discuss the method for EIS preparation and the public participation strategy;

(e) Identify consultation requirements of other environmental laws; and

(f) Determine the relationship between the EIS and the completion of the facilities plan and any necessary coordination arrangements between the preparers of both documents.

(3) Identifying and evaluating alternatives. Immediately following the scoping process, the responsible official shall commence the identification and evaluation of all potentially viable alternatives to adequately

address the range of issues identified in the scoping process. Additional issues may be addressed, or others eliminated, during this process and the reasons documented as part of the EIS.

B. Methods for preparing EIS. After NMED determines the need for an EIS, it shall select one of the following methods for its preparation:

(1) By NMED contracting directly with a qualified consulting firm;

(2) By utilizing a third party method whereby the responsible official enters into “third party agreements” for the applicant to engage and pay for the services of a third party to prepare the EIS. Such agreement shall not be initiated unless both the applicant and the responsible official agree to its creation. A third party agreement will be established prior to the applicant’s EID and eliminate the need for the document. In proceeding under the third party agreement, the responsible official shall carry out the following practices:

(a) In consultation with the applicant, choose the third party contractor and manage that contract;

(b) Select the consultant based on ability and absence of conflict of interest. Third party contractors shall execute a disclosure statement prepared by the responsible official signifying they have no financial or other conflicting interest in the outcome of the project; and

(c) Specify the information to be developed and supervise the gathering, analysis, and presentation of the information. The responsible official shall have sole authority for approval and modification of the statements, analyses, and conclusions included in the third party EIS.

[20.7.7.20 NMAC – Rp, 20.7.7.20 NMAC, 3/10/2020]

20.7.7.21 THE ENVIRONMENTAL IMPACT STATEMENT (EIS) FORMAT:

Preparers of EIS must conform with the requirements of 40 CFR, Part 1502, in writing the EIS. The format used for the EIS shall encourage good analysis and clear presentation of alternatives, including the proposed action, and their environmental, economic, and social impacts. The following standard format for EISs should be used unless the responsible official determines that there is a compelling reason to do otherwise:

- A. Cover Sheet;
 - B. Executive Summary;
 - C. Table of Contents;
 - D. Purpose of and need for action;
 - E. Alternatives including proposed action;
 - F. Affected environment;
 - G. Environmental consequences of the alternative;
 - H. Coordination (includes list of agencies, organizations, and persons to whom copies of the EIS are sent);
 - I. List of preparers;
 - J. Index (commensurate with complexity of EIS);
 - K. Appendices.
- [20.7.7.21 NMAC – Rp, 20.7.7.21 NMAC, 3/10/2020]

20.7.7.22 MONITORING FOR COMPLIANCE:

- A. General. The responsible official shall ensure adequate monitoring of mitigation measures and other loan conditions identified in the FONSI or ROD.
 - B. Enforcement. If the applicant fails to comply with loan conditions, the responsible official may consider applying the sanctions.
- [20.7.7.22 NMAC – Rp, 20.7.7.22 NMAC, 3/10/2020]

20.7.7.23 PUBLIC, FEDERAL AGENCY, AND OTHER STATE AGENCY INVOLVEMENT:

- A. NMED shall make diligent efforts to involve the public

in the environmental review process consistent with program regulations and State Clearinghouse for Intergovernmental Review policies on public participation. The responsible official shall ensure that public notice is provided and shall ensure that public involvement is carried out following state policies and guidelines on public participation.

B. General. It is NMED’s policy that certain public participation steps be achieved before NMED completes the environmental review process. At a minimum, potential applicants shall conduct one public hearing prior to formal adoption of a facilities plan to discuss the proposed facilities plan and any needed mitigation measures.

C. Publication of notices of intent. As soon as practicable after a decision is rendered to issue a categorical exclusion or FONSI, or to prepare an EIS (but before the signing process), the responsible official shall send the notice of intent to interested and affected members of the public, and shall publish the notice of intent in a newspaper of general circulation in the community of the project.

D. The responsible official shall not take administrative action on the project for at least 30 calendar days after release of the notice of determination on the categorical exclusion or release of the FONSI to allow time for public response.

E. EIS. The responsible official shall follow, as applicable, procedures identified at 40 CFR, Part 6, Subpart B, for official filing requirements, availability of documents, commenting process, and supplements to the EIS.

F. Record of Decision. The responsible official shall disseminate the record of decision to those parties which commented on the draft or final EIS. One copy shall be submitted to EPA.

G. Scope. The responsible official may institute additional NEPA-related public participation procedures as are deemed necessary during the environmental review process.

[20.7.7.23 NMAC – Rp, 20.7.7.23 NMAC, 3/10/2020]

HISTORY OF 20.7.7 NMAC:

Pre-NMAC History: Material in the part was derived from that previously filed with the commission of public records - state records center and archives: HED 88-3 (EID), New Mexico Health and Environment Department, Environmental Improvement Division, Review Procedures for Projects Funded Through The Wastewater Facility Construction Loan Program, 9/22/1988

OTHER HISTORY:

20 NMAC 7.7, Wastewater and Water Supply Facilities - Review Procedures For Wastewater Construction Loans, 10/25/1995

History of Repealed Material:

20.7.7 NMAC, Review Procedures for Wastewater Construction Loans, adopted 7/16/2000, replaced with 20.7.7 NMAC Review Procedures Wastewater Construction Loans, effective 3/10/2020.

**ENVIRONMENT
DEPARTMENT
WATER QUALITY CONTROL
COMMISSION**

This is an amendment to 20.7.6 NMAC, Sections 7, 8, 11, 12, 13, 15, 20 and 21, effective 3/10/2020.

20.7.6.7 DEFINITIONS:

As used in this part.

A. “Administrative fee” means a fee assessed and collected by the department from the [local authority] state agency or qualified borrower on each loan with an interest greater than zero percent and expressed as a percentage per year on the outstanding principal amount of the loan, payable by the borrower on the same date that principal and interest on the loan are due, for deposit in the clean water administrative fund.

B. “Applicant” means a [local authority] state agency or

qualified borrower that meets the following criteria: (1) placement on the current fiscal year priority list, (2) financial capability to service a loan, to perform operation and maintenance, to maintain a replacement fund and debt service reserve fund, and (3) readiness to proceed.

C. “Borrower” means a ~~[local authority]~~ state agency or qualified borrower whose application has been approved for eligibility and is ready to proceed to an interim loan agreement.

D. “Commission” or **“WQCC”** means the New Mexico water quality control commission.

E. “Department” or **“NMED”** means the New Mexico environment department.

F. “Event of default” means the borrower failed to make the complete annual payment of principal, plus interest and administrative fee when the same shall become due and payable, as identified in the repayment schedule of the final loan agreement.

G. “Final loan agreement” means a note issued by the borrower and the state upon completion of the project to ~~[evidenc]~~ document the permanent financing of the final loan amount in substantially the form as shown in the attachments.

H. “Final loan amount” means the aggregate amount of the principal disbursed by NMED to the borrower during the project, together with accrued interest on the aggregate principal thereof.

I. “Force account” means ~~[that the local authority provides the materials, equipment, or labor necessary to design or construct the project.]~~ construction performed by the employees of a local authority rather than through a contractor.

J. “Fund” or **“SRF”** means the state water pollution control revolving fund pursuant to Title VI of the Clean Water Act.

K. “Interim loan agreement” means a note, in the form of a line-of-credit, issued by the borrower and the state at

the beginning of the project in anticipation of the issuance of the final loan agreement upon completion of the project in substantially the form as shown in the attachments.

L. “Loan issuance” means execution of the final loan agreement and revised promissory note.

M. “Local authority” means any municipality, intermunicipal agency, county, incorporated county, water and sanitation district or any similar district, recognized Indian tribe, mutual domestic water consumers association as defined by the Sanitary Projects Act, or other issuing agency created pursuant to a joint powers agreement acting on behalf of any entity listed in this subsection.

N. “Operate and maintain” means all necessary activities including replacement of equipment or appurtenances to ensure the dependable and economical function of a wastewater facility in accordance with its intended purpose.

O. “Priority system” means the system for ranking ~~[wastewater facility construction projects]~~ eligible projects for which loan applications have been received pursuant to the Wastewater Facility Construction Loan Act.

P. “Priority list” means the list of ~~[wastewater facility construction projects]~~ eligible projects ranked according to the priority system pursuant to the Wastewater Facility Construction Loan Act.

Q. “Project” means the planning, design, construction, repair, extension, improvement, alteration, or reconstruction of the wastewater facilities or other eligible projects as listed in the Clean Water Act by the borrower as described in the loan application.

R. “Project completion” means the date that ~~[operations of the completed works are initiated or capable of being initiated, whichever is earlier. This also applies to individual phases or segments.]~~ the Department has procedurally determined that the project, phase, or segment is completed.

S. “Project engineer” means the NMED staff engineer assigned to the project.

T. “Qualified Borrower” means any credit worthy borrower with an identified and verifiable repayment source that is eligible for funding pursuant to the Clean Water Act.

U. “State agency” means an agency or department of the executive branch of government.

~~[F:]~~ **V. “Wastewater facility”** means a publicly owned system for treating or disposing of sewage or wastes either by surface or underground methods, including any equipment, plant, treatment works, structure, machinery, apparatus or land in any combination, that is acquired, used, constructed or operated for the storage, collection, reduction, recycling, reclamation, disposal, separation or treatment of water or wastes, or for the final disposal of residues resulting from the treatment of water or wastes, such as pumping stations, facilities, plants and works, outfall sewers, interceptor sewers and collector sewers and other real or personal property and appurtenances incidental to their use or operation. “Wastewater facility” also includes a nonpoint source water pollution control or Brownfield redevelopment project as eligible under the Clean Water Act.

[20.7.6.7 NMAC - Rp, 20.7.6.7 NMAC, 12/30/2015; A, 3/10/2020]

20.7.6.8 BACKGROUND:

[~~The Environment Department Act, Section 9-7A-6.F NMSA 1978,~~] The Department of Environment Act, Section 9-7A-6.D, NMSA 1978, provides authority to the secretary of environment to make and adopt reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its division. The authority for the New Mexico environment department to provide loans to eligible applicants for the construction of wastewater facilities is provided in Sections 74-6A-1 to 15 NMSA 1978, Wastewater Facility Construction Loan Act and in Sections 74-6-1 to 17 NMSA 1978,

the New Mexico Water Quality Act. The water quality control commission adopted regulations pursuant to the Wastewater Facility Construction Loan Act which [address: 6-102 Definitions; 6-103 Eligibility; 6-104 Eligible and Non-eligible Construction Items; 6-105 Priority System and Priority List; and 6-107 Application Procedures.] establish a program to provide financial assistance to state agencies, local authorities, interstate agencies, and other qualified borrowers for the acquisition, construction, or modification of wastewater facilities or other eligible projects or activities. Title VI of the Federal Clean Water Act, as amended, authorizes the U.S. environmental protection agency (EPA) to make capitalization grants to states for deposit in the wastewater facility construction loan fund (state revolving fund - SRF). "Final Initial Guidance - State Water Pollution Control Revolving Fund" was published by EPA on January 28, 1988, which represents EPA's approach to implementation of Title VI. EPA updated its approach to implementation of Title VI with the "Interpretive Guidance for Certain Amendments in the Water Resources Reform and Development Act to Titles I, II, V, and VI of the Federal Water Pollution Control Act" published on January 6, 2015. [20.7.6.8 NMAC - Rp, 20.7.6.8 NMAC, 12/30/2015; A, 3/10/2020]

20.7.6.11 GENERAL:

A. Direct loans from the fund may be offered for up to one hundred percent of total eligible project costs under state and federal statutes and regulations, subject to availability of loan monies.

B. Two types of loans are available: planning/design loans and construction loans.

(1) Planning/design loans. The maximum repayment period is limited to five years from the date of the interim loan agreement. If the borrower receives a construction loan for the same project,

the borrower will be provided the option of [~~reamortizing~~] re-amortizing any remaining principal balance plus accrued interest and administrative fees on the planning/design loan upon completion of the construction project, or may make payments under both loans.

(2)

Construction loans. The length of the loan repayment period will not exceed 30 years or the expected life of the project improvements, whichever is less. Loans of lesser amounts will receive a shorter repayment period depending upon the borrower's ability to service the debt in a reduced time period. The construction loan may include the cost of design and may precede the design phase of the project if the design period is relatively short and if a reasonable estimate of construction costs is available. Since the interim loan agreement is essentially a line-of-credit for planning, design, and construction of the project the borrower must agree to complete the appropriate planning requirements prior to proceeding to the design and construction phases of the project.

C. A long-term commitment for future funding of a phased or segmented project will not be made; although, partial or phased funding for a project (without a guarantee of future funding) may be offered when deemed necessary to meet state water quality and financial assistance objectives.

D. Monies in the fund shall be loaned to eligible applicants as soon as possible after the monies become available. The fund will be managed so that a reserve is held available. The amount of the reserve will be dependent on the total size of the fund, including both available and committed monies. This reserve may be used for administration of the fund, investment, and limited-purpose contingencies, including increases subject to federal and state statutes.

E. In the event project costs exceed the estimates in the interim loan agreement, the borrower may request that NMED consider an increase to the loan. Such request

will be evaluated [~~in~~] with respect to available uncommitted monies in the fund, financial risk of the request, and other criteria set by NMED. NMED may follow any procedure deemed appropriate under the circumstances, including renegotiation of the loan agreement in accordance with federal and state statutes.

F. In the event project costs are less than the estimates in the interim loan agreement, then the loan amount shall be adjusted downward by a corresponding amount at the time the final loan agreement is executed following completion of the project.

G. A loan shall be declared in default if the full payment is not received on the due date. Should a loan be declared in default, NMED may initiate legal action to collect past due amounts. NMED may also notify other state agencies and may take actions to preclude the borrower from receiving grant or other financial assistance from state agencies until all delinquent amounts due on the loan have been paid. In addition to these provisions, technical assistance will be provided to a borrower with a loan in default to help assess the problem and advise on corrective actions needed to bring the loan current. Should these efforts fail to produce results and the borrower fails to adhere to the prescribed payment schedule, [~~the~~] NMED will dispatch an interdisciplinary team (representatives of the general counsel, state auditor, and local government division, as needed) to conduct a comprehensive assessment of the borrower, including, but not limited to, financial condition, management practices, fiscal capacity, economic circumstances, and violations of the terms and conditions of the legally binding final loan agreement. Upon the report of this team, NMED shall take whatever actions deemed appropriate, including court actions, to resolve the outstanding obligation.

H. NMED may waive or adjust any rule relative to the administration of the wastewater facility construction loan fund where it is deemed that the waiver

or adjustment is in the best interest of the state and the community, and the waiver or adjustment does not violate any state or federal statute or regulation.

[20.7.6.11 NMAC - Rp, 20.7.6.11 NMAC, 12/30/2015; A, 3/10/2020]

20.7.6.12 APPLICATION PROCEDURES FOR PRIORITY LIST PLACEMENT:

A. The commission at 20.7.5.11 NMAC specifies loan program application procedures. Applicants for loans shall submit a complete loan application to NMED on a form specified by [the] NMED. Applications may be submitted at any time; although, generally an annual funding cycle is followed.

B. NMED shall review the applications for eligibility, technical merits, and rank the applications based on the project priority system described in 20.7.5.12 NMAC, following NMED procedures for priority system and priority list. [20.7.6.12 NMAC - Rp, 20.7.6.12 NMAC, 12/30/2015; A, 3/10/2020]

20.7.6.13 PRIORITY SYSTEM AND PRIORITY LIST PROCEDURES:

A. ~~[A project must be on the current federal fiscal year priority list in order to receive a planning/design or construction loan. It is the policy of NMED to make loans to communities in order of priority on the current federal fiscal year priority list for loans to the extent reasonable considering the following:]~~
A project must be on the state priority list to receive a planning/design or construction loan. It is the policy of NMED to make loans to state agencies and qualified borrowers in order of priority on the current state priority list for loans to the extent reasonable considering the following:

(1) willingness of [a community] an applicant to accept a loan;

(2) ~~[financial capability of the community to service the loan, to perform operation and maintenance, to maintain a replacement fund and a debt service-~~

~~reserve fund; and] financial capability of the applicant to service the loan, to perform operation and maintenance, and to maintain a debt coverage ratio as determined by NMED; and~~

(3) readiness to proceed.

B. Procedures for developing and handling the annual priority system and priority list under the loan program generally follow existing procedures for the construction grants program which are briefly summarized here.

(1) A specific cap on an individual loan amount may be established by NMED each fiscal year so that the fund will be able to assist several communities each year. The cap may be set as a total of the loan funds available or as a specific dollar amount.

(2) This policy serves to maintain the flexibility of the fund each year by not excluding higher cost projects from participation, yet ensures that more than one worthwhile project will be funded each year.

(3) Fundable applicants will be notified by NMED following approval of the final priority list and a preplanning conference will be held with the applicant and its consulting engineer to identify the procedures and requirements which must be met prior to execution of an interim loan agreement.

[20.7.6.13 NMAC - Rp, 20.7.6.13 NMAC, 12/30/2015; A, 3/10/2020]

20.7.6.15 GENERAL PROJECT ADMINISTRATIVE REQUIREMENTS:

A. Loan agreement.

(1) An interim loan agreement will be prepared by [the] NMED and executed by the borrower for the project which can be financed with available loan funds and which has completed requirements set by [the] NMED pursuant to the Clean Water Act, as amended, and the New Mexico Wastewater Facility Construction Loan Act. Projects which are not ready to proceed to the interim loan agreement stage

within six months of allocation of available loan funds may be bypassed by projects lower on the priority list which are ready to proceed.

(2) The interim loan agreement contains several conditions and certifications including:

(a) certification that the borrower is a legal entity with authority to execute a loan agreement by ordinance; certification that a resolution designating signatory authority has been passed;

(b) copies of all executed contracts, subcontracts, agreements, and related amendments entered into by the borrower prior to the interim loan agreement, but related to this project;

(c) request for proposals (RFP) documentation and an engineering agreement, or letter of certificate if employing staff engineers.

B. Security interest.

(1) Upon execution of an interim loan agreement with [the] NMED for a construction project and before any proceeds of the loan are paid out to the borrower, the borrower shall execute a promissory note for the principal amount of the interim loan agreement plus interest and administrative fee on the unpaid balance at the appropriate rate per annum, and may transfer title to the property upon which the facilities are to be constructed to [the] NMED. In lieu of, or in addition to, the transfer of title requirement, the borrower may transfer whatever interest it possesses in the property upon which facilities are to be constructed, to [the] NMED. In either case, the value of such property or interest so transferred shall be at least equal to the amount of the loan. All such titles and interest transferred to [the] NMED shall be secured by title insurance, if applicable, the cost of which shall be paid by the borrower. [The] NMED shall be named as primary beneficiary of all such title insurance policies. If title insurance for the property is not applicable or is not reasonably

available, as determined by [the] NMED, then the borrower shall provide a title company’s opinion on the abstract of title to the property up to the time the property was acquired by the borrower for use as a wastewater facility.

(2) Upon repayment of the loan, such interest or title shall be reconveyed to the borrower. Where the transfer of title or interest in the property would preclude the obtaining of federal grants, or where such transfer of title or interest is inappropriate or is prohibited by or would be in violation of existing grant-in-aid agreements, NMED may waive the requirements of transfer of title or transfer of any interest in the property, and substitute therefore such other security of sufficient value it deems necessary such as an irrevocable pledge of revenue covenant by the borrower.

(3) After the borrower transfers title or its interest in the property to [the] NMED as security, the borrower shall:

- (a) continue to insure the property;
- (b) be liable for all taxes and assessments; and
- (c) refrain from making major alterations that destroy the value of the security, unless NMED gives prior approval.

C. Allowable and unallowable costs.

(1) Allowable costs shall be limited to those costs which are necessary, reasonable, and directly related to the efficient achievement of the objectives of the project. Costs incurred by the borrower for work performed on the project prior to execution of the interim loan agreement, but which received NMED prior approval, may be considered as allowable costs. The borrower must justify all expenditures for which it requests a disbursement of loan funds according to accepted NMED criteria and procedures. NMED may withhold disbursement of funds and may reclaim improperly documented disbursements until the borrower provides sufficient justification.

(2) All unallowable costs, including but not limited to overhead charges, administrative expenses, indirect costs, and all costs of borrower’s employed inspectors and noneligible construction costs shall be paid by the borrower. The administrative fee shall not be included as principal in the loans and therefore considered an unallowable cost.

(3) The borrower agrees that it will implement, in all respects, the project outlined in the interim loan agreement.

(4) The borrower agrees to make no change in the project description without first submitting a written request to NMED and obtaining NMED approval of the required change.

D. Accounting. Funds received by the borrower from NMED and those funds which are contributed by the borrower shall be deposited in separate bank accounts or in a separate, identifiable ledger account. In addition, the borrower shall establish and maintain accounting procedures which will ensure strict accountability for all funds received and disbursements made by the borrower in connection with the interim loan agreement. NMED shall be responsible for examining the borrower’s audited financial statements in accordance with the most recent circular on audits of states, local governments and non-profit organizations as published by the U.S. office of management and budget.

E. Records. The borrower shall maintain books, records, documents, and other evidence sufficient to reflect properly all costs of whatever nature claimed to have been incurred for the performance of this interim loan agreement. Such books, records, documents, ledgers, and other evidence shall be preserved and made available to NMED, state auditor, U.S. governmental accounting office, and U.S.E.P.A. office of the inspector general during the loan agreement period and for a period of six years

from date of final repayment. If upon termination of the interim loan agreement, questions exist concerning proper expenditure of funds, then the borrower shall preserve and make available all books, records, documents, ledgers and other evidence relating to the interim loan agreement until such questions are settled and the borrower has received written notification to that effect from NMED.

F. Audit and inspection. The project sites and borrower facilities which are in any part the subject of the loan agreement, and borrower records as defined elsewhere herein, shall be subject at all reasonable times to inspection and audit by NMED, state auditor, U.S. governmental accounting office, and U.S.E.P.A. office of the inspector general during the period of the loan agreement and for a period of six years following final payment hereunder. All subcontracts let by the borrower, the cost of which are included in the interim loan agreement, shall include the substance of this audit and inspection clause.

G. Occupational health and safety. The borrower covenants that it will take affirmative action to ensure that the project shall be conducted in conformance with federal and state laws and regulations relating to occupational health and safety. In addition, the borrower shall assure that any contract entered into by the borrower for the performance of work on this project shall contain language by which the contractor and the borrower agree that authorized representatives of [the] NMED occupational health and safety bureau shall have free access to the project site, and shall not be impeded in any way from performance of their duties.

H. Nondiscrimination.

(1) During the performance of the interim loan agreement, the borrower shall not discriminate against any employee or applicant for employment because of race, color, age, religion, sex, or national origin. The borrower shall take affirmative action to ensure nondiscrimination in

employee recruitment advertising, hiring, upgrading, promotion, and selection for training (including apprenticeship).

(2)

The borrower agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this clause. All solicitation or advertisement for employees placed by or on behalf of the borrower shall state that all qualified applicants will receive consideration without regard to race, color, age, religion, sex, sexual preference, or national origin. The borrower shall comply with all provisions of Title VI of the Civil Rights Act of 1964, Executive Order 11246, dated September 24, 1965, and all relevant rules, regulations, and orders of the U.S. secretary of labor. The borrower shall include the provisions of the clause in all project subcontracts.

I. Termination.

NMED shall have the right to terminate the interim loan agreement if at any time in the judgement of NMED, the terms of the interim loan agreement have been violated or the activities described in the project description are not progressing satisfactorily. The borrower may terminate the interim loan agreement with sufficient reason. In either case, [the] NMED shall establish following negotiations with the borrower a repayment schedule for the funds disbursed to the borrower. Such termination must be in writing.

J. Procurement.

Sections 13-1-28 through 13-1-199 NMSA 1978 of, The Procurement Code, imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities, and kick-backs. [20.7.6.15 NMAC - Rp, 20.7.6.15 NMAC, 12/30/2015; A, 3/10/2020]

20.7.6.20 PROJECT CONSTRUCTION REQUIREMENTS:

A. All plans and specifications and related addenda

for the project must be submitted to NMED for review and approval before the project is advertised for sealed construction bids.

B. All work relating to easements, rights of way, other property rights, and financing provisions shall be completed prior to advertising for construction sealed bids.

C. Certified bid tabulation, recommendation of award, and evidence of full project financing should be submitted to NMED for review and approval prior to construction contract award.

D. Competitive bidding, in accordance with applicable state laws (including local wage determinations as provided for in Section 13-4-11 NMSA 1978), shall be used for awarding of contracts. Contracts shall be awarded to the responsible bidder who submits the lowest acceptable bid, or as provided for by state law.

E. Following NMED approval of the proposed award the borrower shall provide for each contract: (1) notice of award, (2) notice of preconstruction conference, (3) executed copies of previously approved contract form documents, and (4) notice to contractor to proceed. Performance, and payment bonds in the amount of one [hundred] hundred percent of the project bid will be required of each contractor and copies of said documents will be filed with NMED. A copy of bid bond (for five percent of the construction cost) for the selected contractor will be filed with [the] NMED.

F. The contractor shall be required to submit a schedule for construction at the preconstruction conference for that contract.

G. The borrower shall submit all modifications to plans, specifications, and contract change orders to NMED's project engineer promptly for approval prior to implementation of such modification or change. NMED's decision shall be rendered promptly in writing. In cases necessitating immediate action, a verbal decision will be rendered by NMED and followed by a written notification.

H. The borrower shall arrange for the services of a qualified full-time resident project inspector, unless waived by NMED, during construction of the project. Borrower shall provide NMED with a summary of the inspector's qualifications and training to be approved by NMED prior to the preconstruction conference.

I. Notwithstanding those inspections performed by the borrower and its engineer, NMED shall have the right to examine all installations comprising the project, including materials delivered and stored on-site for use on the project.

J. After completion of the project, the borrower shall obtain from its engineer as built drawings for the project and certify to NMED that such drawings have been received.

K. The borrower shall provide for NMED review and approval, unless waived by NMED, an operation and maintenance manual for the project prior to ninety percent construction completion. The operation and maintenance manual shall conform to NMED requirements.

L. If this assistance is awarded for construction of collection lines, the borrower shall assure NMED that the existing population will connect to the collection system within a reasonable time after project completion. This shall be accomplished by adoption and annual review of an ordinance and user charge system requiring such connection to the system. [20.7.6.20 NMAC - Rp, 20.7.6.20 NMAC, 12/30/2015; A, 3/10/2020]

20.7.6.21 FINAL LOAN AGREEMENT AND REPAYMENT POLICY:

Upon completion of the planning/design or construction project and after final disbursement of principal to the borrower:

A. NMED and borrower shall execute a final loan agreement which details the final loan amount plus accrued interest and administrative fees due to the date of the final loan agreement.

B. NMED and borrower shall execute a revision to the promissory note and real estate mortgage (if applicable) which were recorded at the county seat at the time of the initial loan agreement. The revision shall reflect final loan amount, plus accrued interest and administrative fees due.

C. NMED shall prepare a repayment schedule for the borrower which details principal, plus accrued interest and administrative fees due. The schedule shall fully amortize the loan within 30 years of project completion. In some cases the amortization shall be less than 30 years. NMED shall address each loan on a case-by-case basis. The borrower may prepay the loan or any portion thereof at any time. The repayment period for a planning/design loan shall not exceed five years. The first annual repayment of principal, interest and administrative fees shall be due within one year after completion of the project.

D. For borrowers with planning/design loans who subsequently receive a construction loan and who choose to reamortize (roll-over) the planning/design loan, repayments for the planning/design loan may be postponed until construction of the project is completed, at which time the principal plus accrued interest and administrative fees for the planning/design loan will be rolled into the final loan agreement for the construction loan with one subsequent repayment schedule.

E. NMED shall annually prepare and send to the borrower a notice of payment due.

F. The borrower shall make a check for the full amount of the notice payable to Wastewater Facility Construction Loan Fund, Attention:

Chief, Construction
Programs Bureau
New Mexico Environment
Department
P.O. Box [26440] 5469
Santa Fe, New Mexico
87502-6110
and mail in time to insure delivery by due date.

G. In the event of late payment or default by the borrower, NMED shall have the option to declare the principal, interest accrued and administrative fee on, any outstanding indebtedness forthwith due and payable automatically without notice or demand of any kind, whereupon the same shall become forthwith due and payable; and NMED may take legal recourse to implement collection.
[20.7.6.21 NMAC - Rp, 20.7.6.21 NMAC, 12/30/2015; A, 3/10/2020]

PUBLIC RECORDS, COMMISSION OF

This is an amendment to 1.21.2 NMAC, Section 519, 612 and 708, effective 7/1/2020.

1.21.2.519 PUBLIC RECORDS REQUESTS:

A. Category: Governance and compliance - records management.

B. Description: Records related to requests for information under the Inspection of Public Records Act including, but not limited to, tracking [~~and responses~~], responses and written explanations of denials.

C. Retention: [~~destroy one year from date request fulfilled~~] destroy four years from date request is deemed by the public body to be fulfilled or denied.
[1.21.2.519 NMAC - N, 10/1/2015; A, 7/1/2020]
[~~For denied requests, refer to 1.21.2.107 NMAC~~]

1.21.2.612 CASE FILES - LOWER COURTS (CIVIL):

A. Category: Legal and judiciary - court administration.

B. Description: Court case files, including, but not limited to, dockets; does not include DUI or domestic violence cases, district, appellate, supreme court or probate case files.

C. Retention: [~~destroy 14 years from date file closed~~]

(1)

Judgement satisfied: destroy one year from date of satisfaction.

(2)

Judgement not satisfied: destroy 14 years from date of judgement.
[1.21.2.612 NMAC - N, 10/1/2015; A, 7/1/2020]

1.21.2.708 VETERINARIAN CLIENT/PATIENT FILES:

A. Category: Natural resource management - animal and livestock.

B. Description: Veterinarian client/patient records.

C. Retention: destroy four years from date file closed.
[1.21.2.708 NMAC - N, 7/1/2020]

End of Adopted Rules

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Other Material Related to Administrative Law

**HUMAN SERVICES
DEPARTMENT
INCOME SUPPORT DIVISION****NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The New Mexico Human Services Department gives Notice of a Minor, Nonsubstantive Correction to 8.100.640 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule:

Paragraph (1) of Subsection A of 8.100.640.17 NMAC was deleted (due to lack of a paragraph (2)) and the subsection was properly re-formatted.

A copy of this Notification will be filed with the official version of each of the above rules.

**End of Other Material
Related to Administrative
Law**

2020 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXXI, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 6	January 14
Issue 2	January 16	January 28
Issue 3	January 30	February 11
Issue 4	February 13	February 25
Issue 5	February 27	March 10
Issue 6	March 12	March 24
Issue 7	March 26	April 7
Issue 8	April 9	April 21
Issue 9	April 23	May 5
Issue 10	May 7	May 19
Issue 11	May 28	June 9
Issue 12	June 11	June 23
Issue 13	July 6	July 14
Issue 14	July 16	July 28
Issue 15	July 30	August 11
Issue 16	August 13	August 25
Issue 17	August 27	September 15
Issue 18	September 17	September 29
Issue 19	October 1	October 13
Issue 20	October 15	October 27
Issue 21	October 29	November 10
Issue 22	November 13	November 24
Issue 23	December 3	December 15
Issue 24	December 17	December 29

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, proposed rules, adopted rules, emergency rules, and other material related to administrative law. The Commission of Public Records, Administrative Law Division, publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978.

The New Mexico Register is available free online at: <http://www.nmcpr.state.nm.us>. For further information, call 505-476-7941.