

NEW MEXICO 
Commission of Public Records
at the State Records Center and Archives
Your Access to Public Information

New Mexico Register

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

Volume XXXV - Issue 8 - April 23, 2024

COPYRIGHT © 2024
BY
THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

The New Mexico Register

Published by the Commission of Public Records,
Administrative Law Division

1205 Camino Carlos Rey, Santa Fe, NM 87507

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos

Rey, Santa Fe, NM 87507.

Telephone: (505) 476-7941; Fax: (505) 476-7910; E-mail: staterules@state.nm.us.

The *New Mexico Register* is available free at <http://www.srca.nm.gov/new-mexico-register/>

New Mexico Register

Volume XXXV, Issue 8

April 23, 2024

Table of Contents

Notices of Rulemaking and Proposed Rules

AUDITOR, OFFICE OF THE STATE

Amended Notice of Proposed Rulemaking and Public Hearing.....500

EDUCATIONAL RETIREMENT BOARD

Notice of Proposed Rulemaking.....541

ENVIRONMENT DEPARTMENT

New Mexico Environmental Improvement Board Notice of Rulemaking Hearing to Consider Proposed Repeal and Replacement of 20.2.71 NMAC and 20.2.75 NMAC.....542

Junta De Mejora Ambiental De Nuevo Mexico Aviso De Audiencia Para La Elaboracion De Normas Para Considerar La Propuseta De Derogacion Y Reemplazo De 20.2.71 NMAC Y 20.2.75 NMAC.....543

HUMAN SERVICES DEPARTMENT

MEDICAL SUPPORT DIVISION

Notice of Rulemaking.....545

PUBLIC EDUCATION DEPARTMENT

Notice of Proposed Rulemaking.....546

TAXATION AND REVENUE DEPARTMENT

Notice of Proposed Rulemaking.....547

WORKFORCE SOLUTIONS, DEPARTMENT OF

Notice of Rulemaking and Public Hearing.....547

Adopted Rules

A = Amended, E = Emergency, N = New, R = Repealed, Rn = Renumbered

REGULATION AND LICENSING DEPARTMENT

HOME INSPECTORS BOARD

16.66.1 NMAC A General Provisions.....550

16.66.2 NMAC A Fees.....554

16.66.3 NMAC A Applications and Licenses.....554

16.66.4 NMAC A License Renewals and Reactivation.....558

16.66.5 NMAC A Continuing Education.....559

16.66.8 NMAC A Disciplinary Proceeding.....559

Other Material Related to Administrative Law

RACING COMMISSION

Notice of Minor, Nonsubstantive Correction.....562

REGULATION AND LICENSING DEPARTMENT

HOME INSPECTORS BOARD

Notice of Minor, Nonsubstantive Correction.....562

This Page Intentionally Left Blank

Notices of Rulemaking and Proposed Rules

AUDITOR, OFFICE OF THE STATE

AMENDED NOTICE OF PROPOSED RULEMAKING AND PUBLIC HEARING

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

A copy of the full text of the proposed amendments to the Audit Rule is available on the Office of the State Auditor’s website at <https://www.osa.nm.gov/auditing/financial-audits/audit-rule/>.

The Office of the State Auditor will consider adopting the amended Audit Rule at a public hearing on May 29, 2024, at 11 a.m. at the New Mexico Society of Certified Professional Accountants at 3400 Menaul Blvd. NE, Albuquerque, NM 87107. The hearing will be a hybrid-virtual meeting and members of the public may attend, listen, and participate via live streaming or telephone as well as by attending in person. Please see the prior link for additional information on attending the virtual public hearing. Public comment is allowed prior to and at the public

hearing on May 29, 2024. Please e-mail written comments on the proposed Audit Rule to Christopher Hall, at christopher.hall@osa.nm.gov from April 23, 2024, through May 30, 2024. If you are unable to e-mail comments, you may deliver written comments to the Office of the State Auditor, 2540 Camino Edward Ortiz, Suite A, Santa Fe, New Mexico 87507, as soon as possible and no later than May 30, 2024. All written comments will be posted on the Office of the State Auditor’s website as soon as practicable after receipt. All comments already made on the record for this rulemaking prior to the issuance of this amended notice *will* be included in the record and are not required to be re-submitted.

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

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

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

Proposed Amendments:

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

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

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

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

2.2.2.6 OBJECTIVE: The objective is to establish [~~policies, procedures, rules, and requirements for~~] regulations for all agencies and local public bodies, as well as the New Mexico state auditor’s designated independent public accountants, including auditors of the

OSA, performing ~~contracting and conducting~~ financial audits, special audits, attestation engagements, performance audits, and forensic accounting engagements ~~of or~~ for the examination of the financial affairs of all governmental agencies and local public bodies of the state of New Mexico.

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

2.2.2.7 DEFINITIONS:

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

A. Definitions

beginning with the letter "A":

(1) "AAG

GAS" means AICPA Audit and Accounting Guide - Government auditing standards and Single Audits (latest edition).

(2) "AAG

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

(3) "Abuse"

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

internal control standards paragraph 8.03.)]

(4) "ACFR"

means the state of New Mexico's annual comprehensive financial report.

(5) "[Attest

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

(6) "Audit"

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

(7) "Audit

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

(8) "Auditor"

means designated independent public [accountant] accountants, including auditors of the OSA, performing audit or [attest] attestation work as defined in the Audit Act and the Public Accountancy Act.

(9) "AICPA"

means American institute of certified public accountants.

(10) "AU-C"

means U.S. auditing standards-AICPA (Clarified).

(11) "AUP"

means agreed upon procedures.

B. Definitions

beginning with the letter "B":

[RESERVED]

C. Definitions

beginning with the letter "C":

(1)

"Component unit" means a legally

separate entity required to be reported in the financial statements of an agency or LPB due to the entity's close financial relationship with the primary agency or LPB.

[(1) "CPA"

means certified public accountant.]

(2) "CPE"

means continuing professional education.

[(3) "CUSIP"

means committee for uniform securities identification procedures, the unique identification number assigned to all stocks and registered bonds in the United States and Canada by the committee on uniform securities identification procedures.

_____ (4) "CYFD"

means the New Mexico children youth and families department.]

D. Definitions

beginning with the letter "D":

[(1) "DFA"

means the New Mexico department of finance and administration.

[(2) "DOH"

means the New Mexico department of health.

_____ (3) "DOT"

means the New Mexico department of transportation.

_____ (4) "DWS"

means New Mexico Department of Workforce Solutions.]

E. Definitions

beginning with the letter "E":

[(1) _____

"ECECD" means the New Mexico early childhood education and care department.

_____ (2) "ERB"

means the New Mexico education retirement board.

F. Definitions

beginning with the letter "F":

(1) "FCD"

means financial control division of [the department of finance and administration] DFA.

(2) ["FDIC"

means federal deposit insurance corporation.

_____ (3) "FDS"

means financial data schedule.

[(1) (3) "Fraud"

means obtaining something of value through willful misrepresentations.

This includes, but is not limited to, fraudulent financial reporting, misappropriation of assets, corruption, and use of public funds for activities prohibited by the constitution or laws of the state of New Mexico. Fraudulent financial reporting means intentional misstatements or omissions of amounts or disclosures in the financial statements to deceive financial statement users, which may include intentional alteration of accounting records, misrepresentation of transactions, or intentional misapplication of accounting principles. Misappropriation of assets means theft of an agency's or LPB's assets, including theft of property, embezzlement of receipts, or fraudulent payments. Corruption means bribery and other illegal acts. [GAO-14-704G federal internal control standards paragraph 8.02:.]

G. Definitions

beginning with the letter "G":

(1) **"GAAP"**

means generally accepted accounting principles [generally] that are accepted in the United States of America.

(2) **"GAAS"**

means generally accepted auditing standards, which are systematic guidelines used by auditors when conducting audits of an entity's financial records in the United States of America.

~~(2)~~ (3) **"GAGAS"**

means generally accepted government auditing standards, or the most recent revision of [government auditing standards] the yellow book issued by the comptroller general of the United States [yellow book].

~~(3)~~ **"GAO"**

means the government accountability office, a division of the OSA:.]

(4) **"GASB"**

means governmental accounting standards board.

~~(5)~~ **"GAAS"**

means auditing standards generally accepted in the United States of America:.]

~~(6)~~ (5) **"GSD"**

means the New Mexico general services department.

~~(7)~~ **"GRT"**

means gross receipts tax:.]

H. Definitions

beginning with the letter "H":

(1) **"HED"**

means the New Mexico higher education department.

(2) **"HSD"**

means the New Mexico human services department.

(3) **"HUD"**

means the United States [(US)] department of housing and urban development.

I. Definitions

beginning with the letter "I":

(1)

"Independence" means both:

(a)

Independence of mind: The state of mind that permits the conduct of an engagement without being affected by influences that compromise professional judgment, thereby allowing an individual to act with integrity and exercise objectivity and professional skepticism; and

(b)

Independence in appearance: The absence of circumstances that would cause a reasonable and informed third party to reasonably conclude that the integrity, objectivity, or professional skepticism of an audit organization or member of the engagement team had been compromised.

(2) **"IPA"**

means [the] an independent public accountant designated by the state auditor to perform [performing professional services] financial audits, special audits, attestation engagements, performance audits, and forensic accounting engagements for the examination of the financial affairs of [for] agencies and local public bodies.

~~(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 [the department of finance and

administration (DFA)] DFA.

~~(2)~~ **"LPB"**

means local public body as defined in the Audit Act, Section 12-6-2 NMSA 1978.

M. Definitions

beginning with the letter "M":

[RESERVED]

N. Definitions

beginning with the letter "N":

(1)

~~"NCUSH"~~ means national credit union shares insurance fund.

~~(2)~~ **"NMAC"**

means New Mexico administrative code.

~~(3)~~ **"NMCD"**

means the New Mexico corrections department.

~~(4)~~ **"NMSA"**

means New Mexico statutes annotated.

~~(5)~~ **"Non-**

attest engagement" means any engagement that is not an attest engagement, including, but not limited to, services performed in accordance with the statement on standards for consulting services or the statement on standards for forensic services, or any other engagement that is not under Section 12-6-3 NMSA 1978, including certain agency-initiated or other engagements in which the IPA's role is to perform an engagement, assist the client or testify as an expert witness in accounting, auditing, taxation, or other matters, given certain stipulated facts:.]

(1) **"NMAC"**

means New Mexico administrative code.

(2) **"NMSA"**

means New Mexico statutes annotated.

(3) **"Non-**

attestation engagement" means any engagement that is not an attestation engagement, including, but not limited to, services performed in accordance with the statement on standards for consulting services or the statement on standards for forensic services, or any other engagement that is not under Section 12-6-3 NMSA 1978, including certain agency-initiated or other engagements

in which the IPA's role is to perform an engagement, assist the client or testify as an expert witness in accounting, auditing, taxation, or other matters, given certain stipulated facts.

O. Definitions

beginning with the letter "O":

~~(4)~~ "Office"

or "OSA" means the office of the state auditor of New Mexico [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.]

"Primary government" means the primary agency or primary local public body that a component unit is attached to due to their financial relationship.

Q. Definitions

beginning with the letter "Q":

[RESERVED]

R. Definitions

beginning with the letter "R":

(1) ["REAC"

means real estate assessment center.

~~(2)~~ "REC"

means regional education cooperative.

~~(3)~~ (2) "Report"

means a document issued as a result of an annual financial and compliance audit, special audit, attestation engagement, performance audit, forensic accounting engagement, or AUP engagement regardless of whether the document is on the contractor's letterhead or signed by the contractor.

~~(4)~~ (3) "RSI"

means required supplementary information.

S. Definitions

beginning with the letter "S":

(1) ["SAS"

means the AICPA's statement on auditing standards.

~~(2)~~ "SHARE"

means statewide human resources

accounting and management reporting system.

~~(3)~~ "SI"

means supplementary information.

~~(4)~~ "SLO"

means the state land office.

~~(5)~~ "Special

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

~~(6)~~ "State

auditor" may refer to either the elected state auditor of the state of New Mexico, or personnel of the office designated by the state auditor.

~~(7)~~ "STO"

means state treasurer's office.]

(2) "SOC"

means system organization controls, which is an audit review in connection with system-level controls of a service organization or entity-level controls of other organizations.

(3) "SOC-

1" means an audit that provides an opinion regarding the controls as the service organization that are likely to be relevant to user entities' internal control over financial reporting.

(4) "SOC-

2" means an audit that provides an opinion about controls at the service organization related to security, availability, processing integrity, confidentiality, or privacy to support users' evaluations of their own system of internal control.

(5) "SOC-3"

means an audit to provide an opinion about the effectiveness of controls at the service organization relevant to security, availability, processing integrity, confidentiality, or privacy.

(6) "Special

audit" means a limited-scope audit of an agency's or local public body's

financial affairs and transactions, in whole or in part, including both attest engagements and non-attest engagements, performance audits, forensic accounting engagements, and any other engagement that is not part of the annual financial statement and compliance audit, depending on designation or scope.

(7)

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

(8) "State

auditor" may refer to either the elected state auditor of the state of New Mexico, or personnel of the office designated by the state auditor.

T. Definitions

beginning with the letter "T":

[RESERVED]

~~(4)~~ "Tier" is

established based on the amount of each LPB's local public body's annual revenue, pursuant to Section 12-6-3 NMSA 1978. [and 2.2.2.16 NMAC.]

~~(2)~~ "TRD"

means the New Mexico taxation and revenue department.]

U. Definitions

beginning with the letter "U":

(1) ["UFRS"

means uniform financial reporting standards.

~~(2)~~ "Uniform

guidance" means Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

~~(3)~~ (2) "U.S.

GAO" means the United States government accountability office.

V. Definitions

beginning with the letter "V":

[RESERVED]

W. Definitions

beginning with the letter "W":

"Waste" includes, but is not limited to, the act of using or expending

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

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

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

Z. Definitions beginning with the letter “Z”:
[RESERVED]
[2.2.2.7 NMAC - Rp, 2.2.2.7 NMAC, 3/28/2023; A, xx/xx/2024]

(iii)

2.2.2.8 THE PROCUREMENT AND AUDIT PROCESS:

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

(1) Subsection A of 2.2.2.14 NMAC, continuing professional education requirements for all staff that the firm will use

on any New Mexico governmental engagements;

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

B. List of approved firms: The state auditor shall maintain a list of independent public accounting (IPA) firms that are approved and eligible to compete for audit contracts, AUPs, and other attest engagements with agencies. The state auditor’s list of approved firms shall be reviewed and updated on an annual basis. An IPA on the list of approved firms is approved to perform government audits, AUPs, and other attest engagements for agencies and local public bodies until the list of approved firms is published for the following year; provided that the OSA may restrict firms at any time for failure to submit firm profile updates timely. An IPA that is included on the state auditor’s list of approved firms for the first time may be subject to an OSA quality control review of the IPA’s working papers for audits, AUPs and other attest engagements. This review shall be conducted as soon as the documentation completion date, as defined by AU-C Section 230, has passed (60 days after the report release date, as posted on the OSA’s audit reports website). The state auditor shall approve contracts for audits, AUPs and other attest engagements only with IPA firms that have submitted a complete and correct firm profile complying with all the requirements set forth in this rule and that has been approved by the OSA. The OSA shall inform all IPAs whose firm profiles were submitted by the due date whether they are on the list of approved firms for audits, AUPs and other attest engagements and shall publish the list of approved firms concurrent with notification to government agencies to begin the procurement process to obtain an IPA to conduct the agency’s

annual financial audit. Firms that only perform non-attest engagements, or otherwise do not meet applicable requirements, shall not be included on the list of approved firms.

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

- (1) the firm received a peer review rating of “failed”;
- (2) the firm does not have a current New Mexico firm permit to practice, if applicable;
- (3) the firm profile does not include at least one certified public accountant with a current CPA certificate who has met the GAGAS CPE requirements described at Subsection A of 2.2.2.14 NMAC, to perform GAGAS audits (however, firms seeking to contract only for agreed-upon-procedures engagements will not be disqualified if GAGAS CPE requirements have not been met);
- (4) the IPA has been restricted in the past and has not demonstrated improvement (this includes submitting excessively deficient audit reports or having excessively deficient workpapers);
- (5) the IPA made false statements in their firm profile or any other official communication with the OSA that were misleading enough to merit disqualification; or
- (6) any other reason determined by the state auditor to serve the interest of the state of New Mexico.

D. Restriction:
(1) IPAs may be placed on restriction based on the OSA’s review of the firm profile and deficiency considerations as described below. Restriction may take the form of limiting either the type of engagements or the number of audit contracts, or both, that the IPA may hold. The OSA may impose a corrective action plan associated with the restriction. The restriction remains in place until the OSA

notifies the IPA that the restriction has been modified or removed. The deficiency considerations include, but are not necessarily limited to:

(a) failure to submit reports in accordance with report due dates provided in Subsection A of 2.2.2.9 NMAC, or the terms of their individual agency contract(s);

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

(c) failure to comply with this rule;

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

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

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

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

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

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

(j) failure to invite the state auditor or the auditor's designee to engagement entrance conferences, progress meetings or exit conferences after receipt of related notification from the OSA;

(k) failure to comply with OSA referrals or requests in a timely manner;

(l) suspension or debarment by the U.S. general services administration;

(m) false statements in the IPA's firm profile or any other official communication with the OSA;

(n) failure to cooperate timely with requests from successor IPAs, such as reviewing workpapers;

(o) failure to have required contracts approved by the OSA; or

(p) any other reason determined by the state auditor to serve the interest of the state of New Mexico.

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

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

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

E. Procedures for imposition of restrictions:

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

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

(i) the nature of the restriction;

(ii) the conditions of the restriction;

(iii) the reasons for the restriction;

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

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

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

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

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

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

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

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

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

(a) financial statement audit;

(b) federal single audit (if applicable);

(c) financial statement preparation so long as the IPA has considered any threat to independence and mitigated it;

(d) other non-audit services (if applicable and allowed by current government auditing standards); and

(e) other (i.e., audits of component units such as housing authorities, charter schools, foundations and other types of component units).

(3) **Auditor rotation rule:** An IPA may not provide services to an agency or LPB for longer than six years. Upon the six-year mark, the agency or LPB must obtain a proposal for another IPA for at least two years before returning to the prior IPA.

(a) Timeframes: These timeframes for auditor rotation do not correlate with procurement timeframes, so the agency and LPB must ensure that the contract follows both this rule and the procurement rules applicable.

(b) Transition: This change will take effect immediately upon adoption of this rule, but will not apply for any Agency, LPB, or component unit until the next auditor procurement cycle after this change goes into effect. The next auditor procurement cycle starts when the current four-year cycle ends. Entities already in either a first or second four-year auditor procurement cycle pursuant to an earlier rule may complete their current four-year cycle.

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

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

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

(5) (6) Agencies are encouraged to include representatives of the offices of separately elected officials such as county treasurers, and component units such as charter schools and housing authorities, in the IPA selection process. As part of their evaluation process, the OSA

recommends that agencies consider the following when selecting an IPA for their annual audit or AUP pursuant to Section 12-6-3 NMSA 1978:

(a) responsiveness to the request for proposal (the firm's integrity, record of past performance, financial and technical resources);

(b) relevant experience, availability of staff with professional qualifications and technical abilities;

(c) results of the firm's peer and external quality control reviews; and

(d) weighting the price criteria less than fifteen percent of the total criteria taken into consideration by the evaluation process or selection committee.

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

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

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

approval of the selected IPA and contract from the OSA, the agency is responsible for getting the contract signed and sent to any oversight agencies for approval (if applicable). The OSA shall not physically sign the contract. After the agency obtains all the required signatures and approvals of the contract, the agency shall, within three weeks of OSA's approval of the contract, submit a copy of the fully executed contract in an electronic portable document format (PDF) by uploading it in OSA-Connect.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(12)~~ **(13)**
 The state auditor shall consider, at a minimum, the following factors when considering which agencies shall be

subject to the state auditor’s selection of an IPA:

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

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

(c)
 whether the agency is on the state auditor’s “at risk” list;

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

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

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

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

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

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

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

(c)
 pursuant to Subsection A of Section

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

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

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

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

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

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

(a)
 lack of experience of the IPA;

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

(c)
 lack of competence or staff availability;

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

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

(f)
 terms in the proposed contract that the state auditor considers to be

unfavorable, unfair, unreasonable, or unnecessary;

(g)

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

(h)

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

(i)

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

(j)

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

(k)

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

(2) An audit

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

(a)

breached a prior-year contract;

(b)

failed to deliver an audit or AUP report on time;

(c)

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

(d)

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

(e)

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

(f)

failed to respond, in a timely and acceptable manner, to an OSA audit, special audit contract, attestation engagement contract, performance audit contract, forensic accounting

engagement contract, AUP report review or working paper review;

(g)

impaired independence during an engagement;

(h)

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

(i)

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

(j)

has a history of excessive errors or omissions in reports or working papers;

(k)

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

(l)

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

(m)

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

(n)

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

(o)

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

(p)

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

(3) An audit

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

designated for audit or AUP to be performed by an IPA.

H. Audit contract

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

(1) be

completed and submitted in its unsigned form by the due date indicated at Subsection F of 2.2.2.8 NMAC;

(2) for

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

(3) in the

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

(4) in the

"other" section of the contract additional services shall be related to the scope of work, but not included in previous categories in the compensation section. Such costs shall be fully detailed and sufficiently describe the required audit related work in the "other provisions" section of the contract.

I. Professional

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

J. Breach of contract:

A breach of any terms of the contract

shall be grounds for immediate termination of the contract. The injured party may seek damages for such breach from the offending party. Any IPA who knowingly makes false statements, assurances, or disclosures may be disqualified from conducting audits or AUP engagements of New Mexico governmental agencies.

K. Subcontractor requirements:

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

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

~~specify subcontractor responsibility, who shall sign the report(s), and how the subcontractor shall be paid. For additional information see the subcontract work section of the OSA website.]~~

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

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

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

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

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

(3) Progress payments up to seventy percent do not require state auditor approval provided that the agency certifies the receipt of services before any payments are made to the IPA. If the report has been submitted, progress payments up to eighty-five percent do not require state auditor approval. The agency shall monitor audit progress and make progress payments only up to the percentage that the audit is completed. If requested by the state auditor, the agency or the IPA shall provide a copy of the approved

invoices and progress billing(s). Progress payments between seventy percent and ninety-five percent if no report has been submitted, or eighty-five and ninety-five percent if a report has been submitted, require state auditor approval after being approved by the agency. When component unit audits are part of a primary government’s audit contract, requests for progress payments on the component unit audit(s) shall be included within the primary government’s request for progress payment approval. In this situation, the OSA shall not process separate progress payment approvals submitted by the component unit.

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

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

(a) stated in the letter accompanying the release of the report to the agency; or

(b) in the case of ongoing law enforcement investigations, stated in a letter prior to the release of the report to the agency. In no circumstance may the total billed by the IPA under the audit contract exceed the total contract amount, as amended if applicable. Further, as the compensation section of the contract shall include the dollar amount that applies to each element of the contracted procedures that shall be performed, if certain procedures, such as a single audit, are determined to be unnecessary and are not performed, the IPA may not bill the agency for these services. Final payment to the

IPA by the agency prior to review and release of the audit report by the state auditor is considered a violation of Section 12-6-14 NMSA 1978 and this rule and shall be reported as an audit finding in the audit report of the agency. If this statute is violated, the IPA may be removed from the state auditor's list of approved auditors.

N. Contract amendment requirements:

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

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

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

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

(3) Since annual financial audit contracts

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

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

O. Termination of audit contract requirements:

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

(2) If the agency or IPA terminates the audit or AUP engagement contract pursuant to the termination paragraph of the contract, the OSA shall be notified of the termination immediately. The

party sending out the termination notification letter shall simultaneously send a copy of the termination notification letter to the OSA with an appropriate cover letter, addressed to the state auditor.

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

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

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

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

[2.2.2.8 NMAC - Rp, 2.2.2.8 NMAC, 3/28/2023; A, xx/xx/2024]

2.2.2.9 REPORT DUE DATES:

A. Report due dates:
The IPA shall deliver the electronic draft annual financial audit report to the state auditor by [5:00] 11:59 p.m. on the date specified in the audit contract and send it electronically by the due date. IPAs and agencies are encouraged to perform interim work as necessary and appropriate to meet the following due dates.

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

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

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

(c) higher education, state agencies

not specifically named elsewhere in this Subsection, district courts, district attorneys, the New Mexico finance authority, the New Mexico lottery authority, and other agencies with June 30 fiscal year-ends that are reported as component units in the state of New Mexico ACFR: November 1;

(d) school districts, ~~[FRD]~~ New Mexico taxation and revenue department, ~~[CYFD]~~ New Mexico children youth and families department, ~~[DOH]~~ New Mexico department of health, ~~[DOT]~~ New Mexico department of transportation, ~~[DWS]~~ New Mexico department of workforce solutions, HSD, GSD, ~~[ECECD]~~ New Mexico early childhood education and care department, SLO, and NMCD: November 15;

(e) ~~[the]~~ PED, New Mexico department of homeland security and emergency management, the state investment council, and the three post-employment benefit agencies (PERA, ERB, and the retiree health care authority): the Wednesday before Thanksgiving day;

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

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

(h) the state of New Mexico ACFR: December 31;

(i) the ERB, PERA and retiree health care authority schedules of employer allocations reports and related employer guides required by Subsections Z of 2.2.2.10 NMAC: June 15;

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

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

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

(m) any agency that requires its report to be released by any specific date (e.g., due to board meeting, federal reporting, etc.): the earlier of its agency due date or one month prior to the requested release date; and

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

(2) If an audit report is not delivered on time to the state auditor, the auditor shall include this instance of non-compliance with Subsection A of 2.2.2.9 NMAC as an audit finding in the audit report. This requirement is not negotiable. If appropriate, the finding may also be reported as a significant deficiency or material weakness in the operation of the agency’s internal controls over financial reporting pursuant to AU-C 265.

(3) An electronic copy of the report shall be submitted for review by the OSA with the following: copy of the signed management representation letter and a copy of the completed state auditor report review guide (available at www.saonm.org). A report shall not be considered submitted to the OSA for the purpose of meeting the due date until a copy of the signed management representation letter and the completed report review guide are also submitted to the

OSA. All separate reports prepared for component units shall also be submitted to the OSA for review, along with a copy of the management representation letter, and a completed report review guide for each separate audit report. A separate component unit report shall not be considered submitted to the OSA for the purpose of meeting the due date until a copy of the signed management representation letter and the completed report review guide are also submitted to the OSA. If a due date falls on a weekend or holiday, or if the OSA is closed due to inclement weather, the audit report is due the following business day by ~~[5:00]~~ 11:59 p.m.

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

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

date, then the IPA shall send a revised notification letter. In the event the contract was signed after the report due date, the notification letter shall still be submitted to the OSA explaining the reason the audit report will be submitted after the report due date. The late report notification letter is not required if the report was submitted to the OSA for review by the due date, and then rejected by the OSA, making the report late when resubmitted. Reports resubmitted to the OSA with changes of the IPA's opinion after the report due date shall be considered late and a late audit finding shall be included in the audit report.

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

B. Delivery and release of the audit report:

(1) The IPA shall deliver to the state auditor an editable electronic copy of the audit report for review by [5:00] 11:59 p.m. on the day the report is due. Unfinished or excessively deficient reports shall not satisfy this requirement; such reports shall be rejected and returned to the IPA and the OSA may take action in accordance with Subsection C of 2.2.2.13 NMAC. When the OSA rejects and returns a standard 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 prepared by IPAs ~~[, 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 will be addressed to the agency executive and governing body (if applicable). The OSA shall will review all audit reports submitted by the report due date before reviewing reports that are submitted after the report due date. Once the review of the report is completed pursuant to Subsection A of 2.2.2.13 NMAC, the OSA will issue an "OSA Review Notes" communication that lists any comments, corrections, or issues that are required to be addressed by the IPA prior to final submission to the OSA. [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] Within five days of receipt of the "OSA Review Notes" communication, the IPA [to] shall 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, a written response to any OSA comments, corrections, and issues, and an electronic Excel version of the summary of findings report and any other required electronic schedule [(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] www.osa.nm.gov). The

OSA ~~shall~~ will not release the report until all comments, corrections, and issues have been addressed and the searchable electronic PDF version of the report and all required electronic Excel schedules [are] have been 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 the OSA agency number, followed by the agency name, the fiscal year, and "final"; and
- (l) be searchable.

(4) The IPA shall deliver to the agency the number of copies of the audit report indicated in the audit contract only after the state auditor has officially released the audit report with a “release letter [2].”

(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] unless and until the late audit report has been submitted. Status reports [The status report] shall be signed by a member of the agency’s governing authority, a designee of the governing authority or a member of the agency’s top management. If the agency has a contract with an IPA to conduct the audit [or perform the AUP engagement], the agency must send the IPA a copy of the quarterly status report. IPAs engaged to audit [or perform AUP engagements for] agencies with late reports are responsible for assisting these agencies in complying with the reporting requirements of this section. Failure to do so shall be noted by the OSA and taken into account during the IPA Firm Profile evaluation process. At a minimum, the quarterly written status report shall include:

(1) a detailed explanation of the agency’s efforts to complete and submit its audit [or agreed-upon procedures];

(2) the current status of any ongoing audit [or agreed-upon procedures] work;

(3) any obstacles encountered by the agency in completing its audit [or agreed-upon procedures]; and

(4) a projected completion date for the financial audit [or agreed-upon procedures] report. [2.2.2.9 NMAC - Rp, 2 2.2.9 NMAC, 3/28/2023; A, xx/xx/2024]

2.2.2.10 GENERAL CRITERIA:

A. Annual financial and compliance audits:

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

(a)

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

(b)

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

statements due to materiality, that fact shall also be disclosed in the notes.

(c)

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

(i)

the IPAs of the primary government and all component units shall consider and comply with the requirements of AU-C 600;

(ii)

the group engagement partner shall agree that the group engagement team will be able to obtain sufficient appropriate audit evidence through the use of the group engagement team's work or use of the work of the component auditors (AU-C 600.15);

(iii)

the component unit auditor selected shall appear on the OSA list of approved IPAs;

(iv)

all bid and auditor selection processes shall comply with the requirements of this rule;

(v)

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

(vi)

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

(vii)

all component unit findings shall be

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

(viii)

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

(d)

With the exception of the statewide ACFR, the following SI 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;

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

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

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

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

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

(iv) the FDS of housing authorities pursuant to Subsection B of 2.2.2.12 NMAC;

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

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

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

(1) the most recent revision of GAGAS issued by the United States government accountability office;

(2) U.S. auditing standards-AICPA (clarified);

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

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

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

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

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

D. Requirements for preparation of financial statements:

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

(2) The financial statements are the responsibility of the agency. The agency shall maintain adequate accounting records, prepare financial statements in accordance with accounting principles generally

accepted in the United States of America, and provide complete, accurate, and timely information to the IPA as requested to meet the audit report due date imposed in Subsection A of 2.2.2.9 NMAC.

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

(4) If the IPA prepared the financial statements in their entirety from the client-provided trial balance or underlying accounting records the IPA should conclude significant threats to independence exist and shall document the threats and safeguards applied to mitigate the threats to an acceptable level. If the threats cannot be documented as mitigated the IPA may appropriately decide to decline to provide the service. IPAs should refer to the GAGAS conceptual framework to evaluate independence. The fact that the auditor prepared the financial statements from the client-provided trial balance or underlying records shall be disclosed on the exit conference page of the audit report.

E. Audit documentation requirements:

(1) The IPA's audit documentation shall be retained for a minimum of five-years from the date shown on the opinion letter of the audit report or longer if requested by the federal oversight agency, cognizant agency, or the state auditor. Audit documentation, including working papers, are the property of the IPA or responsible certificate holder per Subsection A of Section 61-28B-25 NMSA 1978. Audit documentation includes all documents used to support any opinions or findings included in the report. The state auditor shall have access to the audit documentation at the discretion of the state auditor.

(2) When requested by the state auditor, all of the audit documentation shall be delivered to the state auditor

by the due date indicated in the request. State auditor review of audit documentation does not transfer the ownership of the documents. Ownership of the audit documentation is maintained by the IPA or responsible certificate holder.

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

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

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

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

F. Auditor communication requirements:

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

(2) After the agency and IPA have an approved

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

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

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

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

(6) All communications with management and the agency's oversight officials during the audit, regarding any

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

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

H. Referrals and risk advisories: The Audit Act (Section 12-6-1 *et seq.* NMSA 1978) states that “the financial affairs of every agency

shall be thoroughly examined and audited each year by the state auditor, personnel of the state auditor’s office designated by the state auditor or independent auditors approved by the state auditor.” (Section 12-6-3 NMSA 1978). Further, audits of New Mexico governmental agencies “shall be conducted in accordance with generally accepted auditing standards and rules issued by the state auditor.” (Section 12-6-3 NMSA 1978).

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

confirmation to OSA that the IPA took appropriate action in response to the referral. As outlined in 2.2.2.13 NMAC the OSA may review IPA workpapers associated with the annual audit of any agency. OSA workpaper review procedures shall include examining the IPA documentation associated with referrals. Insufficient or inadequate documentation may result in deficiencies noted in the workpaper review letter and may negatively impact the IPA during the subsequent firm profile review process. In accordance with Subsection D of 2.2.2.8 NMAC, an IPA may be placed on restriction if an IPA refuses to comply with OSA referrals in a timely manner.

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

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

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

(1) Procurement Code, Sections 13-1-1 to 13-1-199 NMSA 1978 including providing the state purchasing agent with the name of the agency's chief procurement officer, pursuant to Section 13-1-95.2 NMSA 1978, and Procurement Code Regulations, Section 1.4.1 NMAC, or home rule equivalent. All agencies must retain support for procurement until the contract expires or the minimum time required for record retention is met, whichever is longer.

(2) Per Diem and Mileage Act, Sections 10-8-1 to 10-8-8 NMSA 1978, and Regulations Governing the Per Diem and Mileage Act, Section 2.42.2 NMAC.

(3) Public Money Act, Sections 6-10-1 to 6-10-63 NMSA 1978, including the requirements that county and

municipal treasurers deposit money in their respective counties, and that the agency receive a joint safe keeping receipt for pledged collateral. (In instances when another statute provides for a different timeline applicable to the agency, that statute shall control.)

(4) Public School Finance Act, Sections 22-8-1 to 22-8-48 NMSA 1978.

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

(6) Public Employees Retirement Act, Sections 10-11-1 to 10-11-142 NMSA 1978. IPAs shall test to ensure eligible contributions are remitted to PERA. The IPA shall evaluate and test internal controls regarding employee eligibility for PERA and other benefits. IPAs shall evaluate risk associated with employees excluded from PERA and test that employees are properly excluded.

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

(8) Sale of Public Property Act, Sections 13-6-1 to 13-6-8 NMSA 1978.

(9) Anti-Donation Clause, Article IX, Section 14, New Mexico Constitution.

(10) Special, deficiency, and supplemental appropriations (appropriation laws applicable for the year under audit).

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

(12) Lease purchase agreements, Article IX, Sections 8 and 11, New Mexico Constitution; Sections 6-6-11 to

6-6-12 NMSA 1978; *Montano v. Gabaldon*, 108 NM 94, 766 P.2d 1328 (1989).

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

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

(15) Article IX of the state constitution limits on indebtedness.

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

(17) Retiree Health Care Act, Sections 10-7C-1 to 10-7C-19 NMSA 1978. IPAs shall test to ensure eligible contributions are reported to NMRHCA. NMRHCA employer and employee contributions are set forth in Section 10-7C-15 NMSA 1978. The IPA shall evaluate and test internal controls regarding employee eligibility for NMRHCA and other benefits. IPAs shall evaluate risk associated with employees excluded from NMRHCA and test that employees are properly excluded.

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

(19) School Personnel Act, Sections 22-10A-1 to 22-10A-39 NMSA 1978.

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

(21) The New Mexico opioid allocation agreement.

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

(1) generally accepted government auditing standards (GAGAS) issued by the United States government accountability office, most recent revision;

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

(3) compliance supplement, latest edition; and

(4) internal revenue service (IRS) employee income tax requirements. IRS Publication 15-B, employer’s tax guide to fringe benefits, available online, provides detailed information regarding the taxability of fringe benefits.

L. Audit finding requirements:

(1) Communicating findings: IPAs shall communicate findings in accordance with generally accepted auditing standards and the requirements of GAGAS 6.17-6.30. All finding reference numbers shall follow a standard format with the four-digit audit year, a hyphen, and a three-digit sequence number (e.g. 20XX-001, 20XX-002 ... 20XX-999). All prior year findings shall include the finding numbers used when the finding was first reported under historical numbering systems in brackets, following the current year finding reference number (e.g., 2021-001 (2020-003)) to enable the report user to see what year the finding originated and how it was identified in previous years. Finding reference numbers for single audit findings reported on the data collection form shall match those reported in the schedule of findings and questioned costs and the applicable auditor’s report. Depending on the IPA’s classification of the finding, the finding reference number shall be followed by one of the following descriptions: “material weakness”; “significant deficiency”; “material non-compliance”; “other non-compliance”; or “other matters.”

(a) IPAs shall evaluate deficiencies to determine whether individually or in combination they are significant

deficiencies or material weaknesses in accordance with AU-C 260.

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

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

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

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

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

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

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

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

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

(v) recommendation addressing each condition and cause; and

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

(e) Uniform guidance regarding single audit findings (uniform guidance 200.511): The auditee is responsible for follow-up and corrective action on all audit findings. As a part of this responsibility, the auditee shall prepare a summary schedule of prior audit findings and a corrective action plan for current year audit findings in accordance with the requirements of uniform guidance 200.511. The

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

(f)

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

(2) Prior year

findings:

(a)

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

included in the summary schedule of prior year audit findings. All findings from special audits performed under the oversight of the state auditor shall be included in the findings of the annual financial and compliance audits of the related fiscal year. IPAs shall consider including findings from special audits in annual audit reports.

(b)

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

(3) Current-

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

the report that the audited agency did not provide comments."

(4)

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

(5) If

an agency has entered into any professional services contract with an IPA with a scope of work that relates to fraud, waste, or abuse, and the contract was not approved by the state auditor, the IPA shall report a finding of non-compliance with Paragraph (2) of Subsection C of 2.2.2.15 NMAC.

(6) If an

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

(7)

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

(8) Except

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

(9) In the

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

M. Exit conference and related confidentiality issues:**(1) The IPA**

shall hold an exit conference with representatives of the agency's governing authority and top management, which may include

representatives of any component units (housing authorities, charter schools, hospitals, foundations, etc.), if applicable. The OSA has the authority to notify the agency or IPA that the state auditor shall be informed of the date of any progress meetings and the exit conference. If such notification is received, the IPA and agency shall invite the state auditor to attend all such conferences. If component unit representatives cannot attend the combined exit conference, a separate exit conference shall be held with the component unit's governing authority and top management. The exit conference and presentation to governance shall occur in the forum agreed to by the agency and the IPA, to include virtual or telephonic options. The OSA reserves the right to require an in-person exit conference and presentation to the board. The date of the exit conference(s) and the names and titles of personnel attending shall be stated in the last page of the audit report.

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

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

statements provided to federal or state oversight agencies or to bond rating agencies shall exclude draft auditor opinions and findings, and any pages including references to auditor opinions or findings.

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

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

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

(1) IPAs shall comply with the requirements of GAGAS 6.19-6.24 relating to fraud, noncompliance with provisions of laws, regulations, contracts and grant agreements, waste, and abuse. Relating to contracts and grant agreements, IPAs shall extend the AICPA requirements pertaining to

the auditors' responsibilities for laws and regulations to also apply to consideration of compliance with provisions of contracts or grant agreements. Concerning abuse, if an IPA becomes aware of abuse that could be quantitatively, or qualitatively material to the financial statements or other financial data significant to the audit objectives, the IPA shall apply audit procedures specifically directed to ascertain the potential effect on the financial statements or other financial data significant to the audit objectives.

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

(3) In accordance with Section 12-6-6 NMSA 1978, the state auditor, immediately upon discovery of any violation of a criminal statute in

connection with financial affairs, shall report the violation to the proper prosecuting officer and furnish the officer with all data and information in the auditor's possession relative to the violation.]

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

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

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

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

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

(b) account name;

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

(i) types of deposit accounts include non-interest bearing checking, interest

bearing checking, savings, money market accounts, certificates of deposit, etc.; and

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

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

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

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

(4) Pledged collateral:

(a) All audit reports shall disclose applicable collateral requirements in the notes to the financial statements. In addition, there shall be a SI

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

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

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

(d) Repurchase agreements shall be secured by pledged collateral having a market value of at least one hundred two percent of the contract per Subsection H of Section 6-10-10 NMSA 1978. To determine compliance with the one hundred two percent pledged collateral requirement

of Section 6-10-10 NMSA 1978, the disclosure shall include the dollar amount of the following for each repurchase agreement: one hundred-two percent pledged collateral requirement per statute, and total pledged collateral.

(e)

Per Subsection A of Section 6-10-16 NMSA 1978, “deposits of public money shall be secured by: securities of the United States, its agencies or instrumentalities; securities of the state of New Mexico, its agencies, instrumentalities, counties, municipalities or other subdivisions; securities, including student loans, that are guaranteed by the United States or the state of New Mexico; revenue bonds that are underwritten by a member of the financial industry regulatory authority (known as FINRA), and are rated “BAA” or above by a nationally recognized bond rating service; or letters of credit issued by a federal home loan bank.”

(f)

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

(g)

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

(h)

If an agency has other “authorized” bank accounts, pledged collateral information shall be obtained from the bank and disclosed in the notes to the financial statements. The state treasurer monitors pledged collateral related to most state agency bank accounts. State agencies should not request the pledged collateral information from the state treasurer. In the event pledged collateral information specific to the state agency is not available, the following note disclosure shall be made: detail

of pledged collateral specific to this agency is unavailable because the bank commingles pledged collateral for all state funds it holds. However, STO’s collateral bureau monitors pledged collateral for all state funds held by state agencies in such “authorized” bank accounts.

(5) Agencies

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

Q. Budgetary

presentation:

(1) Prior year

balance included in budget:

(a)

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

(b) If

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

(2) The

differences between the budgetary basis and GAAP basis revenues and expenditures shall be reconciled. If the required budgetary comparison information is included in the basic financial statements, the reconciliation shall be included on the statement itself or in the notes to the financial statements. If the required budgetary comparison is presented as RSI, the reconciliation to GAAP basis shall appear in either a separate schedule or in the notes to the RSI (AAG SLV 11.14). The notes to the financial statements shall disclose the legal level of budgetary control for the entity and any excess of expenditures over appropriations at the legal level

of budgetary control. The legal level of budgetary control for local governments is at the fund level. The legal level of budgetary control for school districts is at the function level. The legal level of budgetary control for state agencies is explained at Subsection A of 2.2.2.12 NMAC. For additional information regarding the legal level of budgetary control the IPA may contact the applicable oversight agency (DFA, HED, or PED).

(3) Budgetary

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

(a)

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

(b)

Budgetary comparisons for the general fund and major special revenue funds shall be presented as RSI if the agency budget structure differs from the GAAP fund structure enough that the budget information is unavailable for the general fund and major special revenue funds. An example of this “perspective difference” would occur if an agency budgets by program with portions of the general fund and major special revenue funds appearing across various program budgets. In a case like that the budgetary comparison would be presented for program budgets and include information in addition to the general fund and major special revenue funds budgetary comparison data (GASBS 41.03 and .10).

R. Appropriations:

(1) Budget

related findings:

(a) If

actual expenditures exceed budgeted expenditures at the legal level of

budgetary control, that fact shall be reported in a finding and disclosed in the notes to the financial statements.

(b)

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

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

(a)

Special, deficiency, specific, and capital outlay appropriations shall be disclosed in the notes to the financial statements. The original appropriation, the appropriation period, expenditures to date, outstanding encumbrances, unencumbered balances, and amounts reverted shall be shown in a SI schedule or in a note to the financial statements. The accounting treatment of any unexpended balances shall be fully explained in the SI schedule or in a note to the financial statements. This is a special requirement of the state auditor, and it does not apply to the statewide ACFR audit.

(b)

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

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

(1) Audits

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

(2) The

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

(3) The OSA

may select additional agencies' application systems of record for SOC audit.

T. Required auditor's reports:

(1) The AICPA

provides examples of independent auditor's reports in the appendix to chapter 4 of AAG GAS and appendix A to chapter 16 of AAG SLV.

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

(2) The AICPA

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

(a)

The state auditor requires the report

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

(b)

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

(3) The AICPA

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

(4) The

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

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

V. Joint powers agreements:

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

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

W. Inventory certification:

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

(2) Agencies shall conduct an annual physical inventory of chattels and equipment

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

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

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

(1) PERA and ERB shall each prepare schedules of employer allocations as of June 30

of each fiscal year. The state auditor requires the following:

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

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

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

(d) The AU-C 805 audits and resulting

separate reports on the PERA and ERB schedules of employer allocations shall be submitted to the OSA for review and release pursuant to Subsection A of 2.2.2.13 NMAC, prior to distribution to the participant employers.

(e)

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

(f)

PERA and ERB shall each prepare an employer guide that illustrates ~~[the correct use of their respective schedule of employer allocations report by their participant employers. The guides shall explicitly distinguish between the plan-level reporting and any employer-specific items]~~ the use of their respective schedule of employer allocations report to create journal entries generally required by GASBS 68. 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. Stand-alone state agency financial statements that exclude the proportionate share of the collective net pension liability of the state of New Mexico shall include note disclosure referring the reader to the statewide ACFR for the state's net pension liability and other pension-related information.

(2)

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

Z. GASBS 77, tax abatement agreements: Unaudited, but final, GASBS 77 disclosure information shall be provided to any agency whose tax revenues are affected by the reporting agency's tax

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

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

(1)

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

(2)

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

(3) RHCA

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

(4)

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

(5)

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

(6)

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

(7)

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

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

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

A. Pertaining to audits of state agencies:

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

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

(3) Accounts payable at year-end and reversion calculation: If goods and services were received (as defined by generally accepted accounting principles) by the end of the fiscal year but not paid for by the end of the fiscal year, an accounts payable shall be reported for the respective amount due in both the government-wide financial statements and the fund financial statements. The “actual” expenditures in the budgetary comparison exclude any accounts payable that were not paid timely and therefore require a request to the financial control division to pay prior year bills out of the current year budget. They are paid out of the budget of the following fiscal year. An agency’s reversions are calculated using the *budgetary basis expenditures* because the agency does not have the legal authority to obligate the state for liabilities once the appropriation period has lapsed. Thus, the agency cannot keep the cash related to accounts payable that were not paid timely. This results in a negative fund balance in the modified accrual basis financial statements of a reverting fund.

(4) Net position/fund balance:

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

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

(iii) unrestricted as defined by GASBS 63.11.

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

(5) Book of record:

(a) The state maintains the centralized accounting system SHARE. The SHARE data and reports are the original book of record that the auditor is auditing. Each fiscal year, the agency shall record all audit adjusting journal entries in SHARE. The financial information in SHARE shall agree to the agency’s audited financial statements, with the exception of 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

<p>federal funds.</p>	<p>(iv) 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.</p>	<p>to reallocate the revenues and expenditures/expenses to the appropriate fund. Reimbursements are not reported as inter-fund activity in the financial statements.</p>
<p>(d) For more detail about the SHARE chart of accounts see the DFA website.</p>		<p>(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 2.20.1.10 NMAC.</p>
<p>(6) Reversions to state general fund:</p>		
<p>(a) All reversions to the state general fund shall be identified in the financial statements or the notes to the financial statements by the fiscal year of appropriation (i.e., reversion to state general fund - FY 16). The gross amount of the appropriation and the gross amount of the reversion shall be shown separately.</p>		
<p>(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.</p>	<p>(c) Regarding inter-agency transfers between legally separate component units and the primary government (the state of New Mexico):</p> <p>(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);</p> <p>(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);</p>	<p>(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.</p>
<p>(7) Non-reciprocal (not payments for materials or services rendered) interfund (internal) activity includes:</p>		
<p>(a) transfers; and</p>		
<p>(b) reimbursements (GASBS 34.410):</p>		
<p>(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;</p>		<p>(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.</p>
<p>(ii) inter-agency transfers (between an agency’s internal funds and other funds of the state that are outside the</p>	<p>(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;</p> <p>(e) Reimbursements are transfers between funds that are used</p>	

(11) Budgetary basis for state agencies: the state budget is adopted on the modified accrual basis of accounting except for accounts payable accrued at the end of the fiscal year that do not get accrued by the statutory deadline per Section 6-10-4 NMSA 1978. Those accounts payable that do not get paid timely or accrued by the statutory deadline shall be paid out of the next year's budget. If an agency needs to recognize additional accounts payable amounts that were not accrued by the statutory deadline, then the budgetary statements and the fund financial statements require a reconciliation of expenditures, as discussed at Subsection Q of 2.2.2.10 NMAC. All transactions are recorded in the state's book of record, SHARE, under the modified accrual basis of accounting except for accounts payable not meeting the statutory deadline; therefore, the "actual" expenditures in the budgetary comparison schedules equal the expenditures as recorded in SHARE for the fund. Encumbrances related to single year appropriations lapse at year end. Appropriation periods are sometimes for periods in excess of 12 months (multiple-year appropriations). When multiple-year appropriation periods lapse, the authority for the related budgets also lapse and encumbrances can no longer be charged to those budgets. The legal level of budgetary control shall be disclosed in the notes to the financial statements. Per Subsection C of Section 9 of the General Appropriation Act of 2017, all agencies, including legislative agencies, may request category transfers among personal services and employee benefits, contractual services and other. Therefore, the legal level of budgetary control is the appropriation program level (A-Code, P-Code, and Z-Code). A-Codes pertain to capital outlay appropriations (general obligation/severance tax or state general fund). P-Codes pertain to program/operating funds. Z-Codes pertain to special appropriations. The IPA shall compare total expenditures for each

program to the program's approved final budget to evaluate compliance.

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

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

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

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

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

or functions. GASBS 34.41 requires governments to report direct expenses for each function.

B. Pertaining to audits of housing authorities:

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

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

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

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

(b) The IPA shall include the housing authority's governing board and management representatives in the entrance and exit conferences with the primary government. If it is not possible to hold such combined conferences, the IPA shall hold separate entrance and exit conferences with housing authority's management and a member of the governing board. The OSA has the authority to notify the agency or IPA that the state auditor shall be informed of the date of the entrance conference, any progress meetings and the exit conference. If such notification is received, the IPA and agency shall

invite the state auditor to attend all such conferences no later than 72 hours before the proposed conference.

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

(a) The housing authority shall account for financial activity in proprietary funds.

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

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

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

(a) Housing authority audit contracts include the cost of the audit firm's AU-C 725 opinion on the FDS. The

preparation and submission cost for this HUD requirement shall be included in the audit contract. The public housing authority shall electronically submit a final approved FDS based on the audited financial statements no later than nine months after the public housing authority's fiscal year end. The IPA shall:

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

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

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

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

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

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

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

C. Pertaining to audits of school districts:

(1) In the event that 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)] 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 differences between the school district records and the PED report amounts, other than those explained by the adjusting entries, the IPA shall issue a finding which explains that the PED reports do not reconcile to the school district records.

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

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

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

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

(4) Pertaining to charter schools:

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

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

(c) No charter school that has been determined to be a component unit may be omitted from the financial statements of the primary government based on materiality. All charter schools that are component units

shall be included in the basic financial statements using one of the presentation methods described in GASBS 34.126, as amended.

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

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

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

E. Pertaining to audits of educational institutions:

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

(2) Budgetary comparisons: the legal level of budgetary control per 5.3.4.10 NMAC shall be disclosed in the notes to the financial statements. The state

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

(a)

Unrestricted and restricted – All operations (schedule 1): beginning fund balance/net position; unrestricted and restricted revenues; state general fund appropriations; federal revenue sources; tuition and fees; land and permanent fund; endowments and private gifts; other; total unrestricted & restricted revenues; unrestricted and restricted expenditures; instruction; academic support; student services; institutional support; operation and maintenance of plant; student social & cultural activities; research; public service; internal services; student aid, grants

& stipends; auxiliary services; intercollegiate athletics; independent operations; capital outlay; renewal & replacement; retirement of indebtedness; total unrestricted & restricted expenditures; net transfers; change in fund balance/net position (budgetary basis); ending fund balance/net position.

(b)

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

(c)

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

(3)

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

(4)

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

(5)

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

(a)

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

(b)

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

(6)

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

(7)

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

F. Pertaining to audits of investing agencies:

Investing agencies, which are defined as STO, PERA, ERB, and the state investment council, shall prepare

schedules of asset management costs which include management fee information by investment class.

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

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

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

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

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

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

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

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

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

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

[2.2.2.12 NMAC - Rp, 2.2.2.12 NMAC, 3/28/2023; A, xx/xx/2024]

2.2.2.14 CONTINUING PROFESSIONAL EDUCATION AND PEER REVIEW REQUIREMENTS:

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

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

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

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

(a) the peer review report for the auditor's firm;

(b) if applicable, detailed descriptions of the findings, conclusions and recommendations related to

deficiencies or significant deficiencies required by GAGAS 5.91;

(c) if applicable, the auditor's response to deficiencies or significant deficiencies;

(d) the letter of acceptance from the peer review program in which the firm is enrolled; and

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

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

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

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

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

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

auditor shall take into consideration the fact that AICPA peer reviews are performed on a risk-based or key-element approach looking for systemic problems, while the state auditor reviews are engagement-specific reviews.

D. SOC Audit

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

[2.2.2.14 NMAC - Rp, 2.2.2.14 NMAC, 3/28/2023; A, xx/xx/2024]

2.2.2.15 SPECIAL AUDITS AND EXAMINATIONS:

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

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

(2)

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

(3)

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

(a)

Any records that result in, or are part of, any subsequent or resulting special audit, performance audit, attestation engagement or forensic accounting or other non-attest engagement will

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

(b)

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

(4) [The] If the

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

B. Special audit or examination process:

(1)

Designation: Pursuant to Section 12-6-3 NMSA 1978, in addition to the annual audit, the state auditor may cause the financial affairs and transactions of an agency to be audited in whole or in part. Accordingly, the state auditor may designate an agency for special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement regarding the financial affairs and transactions of an agency or local public body

based on information or a report received from an agency, IPA or member of the public. For purposes of this rule “special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement” includes, without limitation, AUP, consulting, and contract close-out (results-based award) engagements that address financial fraud, waste, or abuse in government. It also includes non-attest engagements performed under the forensic services standards issued by the AICPA and engagements performed following the Code of Professional Standards issued by the Association of Certified Fraud Examiners (ACFE). The state auditor shall inform the agency of the designation by sending the agency a notification letter. The state auditor may specify the subject matter, the scope and any procedures required, the AICPA or other professional standards that apply, and for a performance audit, performance aspects to be included and the potential findings and reporting elements that the auditors expect to develop. Pursuant to Section 200.503 of Uniform Guidance, if a single audit was previously performed, the special audit, attestation engagement, performance audit or forensic accounting engagement shall be planned and performed in such a way as to build upon work performed, including the audit documentation, sampling, and testing already performed by other auditors. The attestation and performance audit engagements may be conducted pursuant to government auditing standards if so specified by the OSA.

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

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

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

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

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

- (i)** a completed template for special audits, attestation engagements, performance audits or forensic accounting engagements, provided at www.osanm.org, which the agency shall print on agency letterhead; and
- (ii)** a completed contract form including the contract fee, start and completion

date, and the specific scope of services to be performed in the format prescribed by the OSA, provided at www.osanm.org, with all required signatures on the contract.

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

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

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

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

(7) Access to records and documents: For

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

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

(9) Required reporting: All reports for special audits, attestation engagements, performance audits, forensic accounting engagements, or non-attest engagements related to financial fraud, waste or abuse in

government undertaken pursuant to 2.2.2.15 NMAC (regardless of whether they are conducted pursuant to AICPA standards for consulting services, forensic services or for attestation engagements, non-attest engagements, or other professional standards) shall report as findings any fraud, illegal acts, non-compliance or internal control deficiencies, pursuant to Section 12-6-5 NMSA 1978. Each finding shall comply with the requirements of Subsection L of 2.2.2.10 NMAC for audit and attest engagements or Subsection D of 2.2.2.15 NMAC for non-attest engagements.

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

(11) Report release: After OSA's review of the report for compliance with the professional services contract and this rule, the state auditor shall authorize the IPA to print and submit the final report. An electronic version of the report, in the PDF format described at Subsection B of 2.2.2.9 NMAC, shall be delivered to the state auditor within five business days. The state auditor shall not release the report until all the required documents are received

by the state auditor. The state auditor shall provide the agency with a letter authorizing the release of the report pursuant to Section 12-6-5 NMSA 1978. Agency and local public body personnel shall not release information to the public relating to the special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement until the report is released and has become a public record pursuant to Section 12-6-5 NMSA 1978. Except for the exception under Subsection B of 2.2.2.15 NMAC, at all times during the engagement and after the engagement report becomes a public record, the IPA or other professional(s) shall not disclose to the public confidential information about the auditee or about the engagement. Confidential information is information that is not generally known to the public through common means of providing public information like the news media and internet.

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

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

(a) stated in the letter accompanying the release of the report to the agency, or

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

C. Agency-initiated special audits or examinations:

(1)

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

(2)

[Contracting: An agency, IPA or other professional shall not enter into a professional services contract for a special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement regarding the financial affairs and transactions of an agency and relating to financial fraud, waste or abuse in government without the prior written approval of the state auditor. The proposed professional services contract shall be submitted to the state auditor for review and approval after it has been signed by the agency and the IPA or other professional, unless the agency or IPA or other professional applies to the state auditor for an exemption and the state auditor grants the exemption. When contracting with an IPA or other professional, the agency shall contract only with an IPA or other professional that has

been approved by the state auditor to conduct such work. The state auditor may, in its sole discretion, require a non-IPA professional to submit proof of qualifications, a firm profile or equivalent documentation prior to approving the contract. The contract shall include the contract fee, start and completion date, and the specific scope of services to be performed, and shall follow any template that the state auditor may provide. See Subsection F of 2.2.2.10 NMAC for applicable restrictions on the engagement letter.] Any agency, local public body, IPA or other professional that enters into a professional services contract for a special audit or examination of the financial affairs and transactions of an agency or local public body that was not designated by the state auditor for the engagement must notify the OSA and provide a copy of any resulting report or any resulting findings of violations of law or good accounting practices to the OSA. Findings shall be reported as described in Subsection D of 2.2.2.15 NMAC. All findings relating to any violation of a criminal statute in connection with financial affairs must be reported immediately to the OSA pursuant to Section 12-6-6, NMSA 1978.

~~(3)~~

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

D. Finding

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

(a)

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

(b)

Each finding shall specifically state and describe the following:

(i)

condition (provides a description of a situation that exists and includes the extent of the condition and an accurate perspective, the number of instances found, the dollar amounts involved, if specific amounts were identified);

(ii)

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

(iii)

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

(iv)

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

(v)

recommendation addressing each condition and cause; and

(vi)

agency response (the agency’s response shall include specific planned corrective actions with a timeline and designation of what employee position(s) are responsible for meeting the deadlines in the timeline).

[2.2.2.15 NMAC - Rp, 2.2.2.15

NMAC, 3/28/2023; A, xx/xx/2024]

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

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

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

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

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

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

B. Determination of revenue and services: Annually, following the procedures described in Subsection F of 2.2.2.8 NMAC, the state auditor shall provide local public bodies written authorization to obtain

services to conduct a financial audit or other procedures. Upon receipt of the authorization, a local public body shall determine its annual revenue in accordance with Subsection A of 2.2.2.16 NMAC. The following requirements for financial reporting apply to the following annual revenue amounts (tiers):

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

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

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

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

(5) if a local public body’s annual revenue is greater than fifty thousand dollars (\$50,000) but less than two hundred-fifty thousand dollars (\$250,000), and the local public body expended any capital outlay funds during the

fiscal year, then the local public body shall procure the services of an IPA for the performance of a tier five AUP engagement in accordance with the audit contract for a tier five AUP engagement;

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

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

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

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

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

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

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

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

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

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

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

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

(3) The IPA shall hold an entrance conference and an exit conference with the local public body. The entrance and exit conference shall occur in the forum agreed to by the local public body and the IPA, to include virtual or telephonic options. The OSA reserves the right to require an in-person entrance or exit conference. The OSA has the authority to notify the agency or IPA that the state auditor shall be informed of the date of the entrance conference, any progress meetings and the exit conference. If such notification is received, the IPA and agency shall invite the state auditor to attend all such conferences no later than 72 hours before the proposed conference or meeting.

(4) The IPA shall submit the report to the OSA

for review in accordance with the procedures described at Subsection B of 2.2.2.9 NMAC. Before submitting the report to OSA for review, the IPA shall review the report using the AUP report review guide available on the OSA's website at www.saonm.org. The report shall be submitted to the OSA for review with the completed AUP report review guide. Once the AUP report is officially released to the agency by the state auditor (by a release letter) and the required waiting period of five calendar days has passed, unless waived by the agency in writing, the AUP report shall be presented by the IPA, to a quorum of the governing authority of the agency at a meeting held in accordance with the Open Meetings Act, if applicable. This requirement only applies to agencies with a governing authority, such as a board of directors, board of county commissioners, or city council, which is subject to the Open Meetings Act. The IPA shall ensure that the required communications to those charged with governance are made in accordance with AU-C 260.12 to 260.14.

G. Progress payments:

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

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

(a) stated in the letter accompanying the release of the report to the agency, or

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

releasing the report to the agency will be issued when it is appropriate to release the report.

H. Report due dates, notification letters and confidentiality:

(1) For local public bodies with a June 30 fiscal year-end that qualify for the tiered system, the report or certification due date is December 15. Local public bodies with a fiscal year end other than June 30 shall submit the AUP report or certification no later than five months after the fiscal year-end. Late AUP reports (not the current reporting period) are due not more than six months after the date the contract was executed. An electronic copy of the report shall be submitted to the OSA. AUP reports submitted via fax or email shall not be accepted. A copy of the signed dated management representation letter shall be submitted with the report. If a due date falls on a weekend or holiday, or if the OSA is closed due to inclement weather, the report is due the following business day by [5:00] 11:59 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 version of the AUP report, in PDF format, as described at Subsection B of 2.2.2.9 NMAC, shall all be delivered to the OSA within five business days. The OSA shall not release the AUP report until the electronic version of the report is received by the OSA. The OSA shall provide the local public body with a letter authorizing the release of the report after the required five day waiting period. Released reports may be selected by the OSA for comprehensive report and workpaper reviews. After such a comprehensive report and workpaper review is completed, the OSA shall issue a letter to advise the IPA about the results of the review. The IPA shall respond to all review comments as directed. If during the course of its review, the OSA finds significant deficiencies that warrant a determination that the engagement was not performed in accordance with provisions of the contract, applicable AICPA standards, or the requirements of this rule, any or all of the following action(s) may be taken:

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

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

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

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

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

[2.2.2.16 NMAC - Rp, 2.2.2.16 NMAC, 3/28/2023; A, xx/xx/2024]

EDUCATIONAL RETIREMENT BOARD

NOTICE OF PROPOSED RULEMAKING

Public Hearing: Notice is hereby given that the New Mexico Educational Retirement Board (hereafter, “Board”) will convene a Rule Hearing at 9:00 am (MT) on May 30, 2024, at the Albuquerque Public Schools Headquarters, located at 6400 Uptown Blvd. NE, Albuquerque, New Mexico 87110.

Purpose: The purpose of the Rule Hearing is to receive public comment and to consider adoption of the proposed repeal and replacement of 2.82.5 NMAC - Retirement Benefits and repeal and replacement of 2.82.9 NMAC – Administrative Unit Reports and Remittances.

Statutory Authority: Educational Retirement Act, Paragraph (5) of Subsection A of Section 22-11-6 NMSA 1978.

Summary of Proposed Amendments:

The replacement of 2.82.5 NMAC removes all references to the return to work program requiring a 12 month layout period authorized under Section 22-11-25.1 NMSA 1978 because the program is no longer

available to new applicants pursuant to Subsection A of Section 22-11-25.1 NMSA 1978.

Proposed Section 15 of 2.82.5 NMAC would allow a retired member who is otherwise qualified for a return to work program, and who returned to employment with a local administrative unit (“LAU”) without prior Educational Retirement Board (“ERB”) approval, to terminate employment or file an appropriate return to work application within 30 days following the date of the letter from the ERB notifying the retiree of their failure to file an application. A retiree who complies with the requirements would not be suspended and would not repay to the retirement fund any of the benefits received while the retiree was ineligible for benefits.

A retiree who fails to file an application would have their benefit suspended immediately, and they must verify that they have terminated employment, and reapply for retirement.

A retiree who receives a letter from the ERB notifying the retiree of their failure to file an application who is not qualified to return to work under any program and who returns to work would have their benefit suspended immediately, must repay to the retirement fund any of the benefits received while the retiree was ineligible for benefits, must verify that they have terminated employment, and must reapply for retirement.

The Rule clarifies that a retiree who has satisfied the 90-day layout period required for certain return to work programs need not complete another layout period to qualify for those programs. Also, time of employment and income received while employed without ERB approval would count against the time and income caps contained in the return to work programs.

Proposed Section 15 of 2.82.5 would also allow all retirees employed under an approved return to work program

to switch to another approved program once per fiscal year during the month of July. The Rule would also clarify that a retiree who wishes to provide independent contractor services to an LAU must submit and obtain approval of an independent contractor application from ERB. A retiree who fails to submit and obtain approval as an independent contractor prior to providing services to an LAU may be considered employed during the period of providing services to the LAU. Section 15 would also provide notice that penalties for violations may be appealed. Finally, the Rule would require each LAU to create, maintain and publicize to its employees an internal return to work policy consistent with the applicable statutes and rules.

A Subsection C is added to each of Sections 16, 17 & 18 of 2.82.5 NMAC to provide that, if a retiree’s benefits are suspended due to a violation, the retiree must certify to ERB and provide documentation from their employer(s) verifying that they have terminated all LAU employment and must reapply for retirement before their benefits can resume.

The replacement of 2.82.9 NMAC would assess a monetary penalty against an LAU for each failure to correctly include or identify an individual as employed or to miscategorize an employee when submitting a work report reflecting payment of wages as required pursuant to this rule. The penalty would be payable to ERB and shall be assessed as follows: 1st failure – five hundred dollars (\$500), 2nd failure – one thousand dollars (\$1,000), 3rd and each subsequent failure – one thousand five hundred dollars (\$1,500). The ERB Executive Director can waive the penalty for a first violation. The Board of Trustees can waive the penalty for second and subsequent violations.

The replacement of 2.82.9 NMAC would also remove the one percent interest rate contained in Paragraph (3) of Subsection C that is added

to the state treasurer’s overnight investment program interest rate that is assessed against an LAU for submitting late contributions.

Details for Obtaining a Copy of Proposed Rule Amendments and Submitting Oral or Written Comments:

A copy of the proposed rule amendments is available on the NMERB website at <https://www.erb.nm.gov>. Hard copies are available for pick up at the NMERB offices located at 701 Camino de los Marquez, Santa Fe, NM 87505 or 8500 Menaul Blvd. NE, Suite B-450, Albuquerque, NM 87112 during regular business hours. The proposed rule replacement amendments are also posted on the New Mexico Sunshine Portal at <https://ssp.nm.gov>. Interested individuals may provide oral comments at the public rule hearing or submit written comments by mail to Amanda Olsen, New Mexico Educational Retirement Board, P.O. Box 26129, Santa Fe, NM 87502 or by email to NMERB. RuleChange@erb.nm.gov or by fax to (505) 827-1855. Written comments must be received by 5:00 pm (MT) on May 24, 2024. All timely submitted written comments will be posted on the NMERB website at <https://www.erb.nm.gov>.

Any person with a disability who needs a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact Amanda Olsen at (505) 476-6133 as soon as possible or at least ten business days before the public hearing.

ENVIRONMENT DEPARTMENT

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF RULEMAKING HEARING TO CONSIDER PROPOSED REPEAL AND REPLACEMENT OF 20.2.71 NMAC AND 20.2.75 NMAC

The New Mexico Environmental Improvement Board (“Board”) will hold a public hearing on June 27, 2024 at 9:00 a.m., and continuing at the direction of the Board, in the NM State Capitol Building, Room 321, 490 Old Santa Fe Trail, Santa Fe, New Mexico 87505.

The purpose of the hearing is to consider the matter of EIB 24-12(R), proposed repeal and replacement of the Air Quality Control Regulations codified in the New Mexico Administrative Code (NMAC) at 20.2.71 NMAC (Operating Permit Emissions Fees) and 20.2.75 NMAC (Construction Permit Fees). The proponent of these regulatory repeals and replacements is the New Mexico Environment Department (“NMED”). The purpose of the public hearing is to consider and take possible action on a petition from the NMED to repeal and replace 20.2.71 NMAC and 20.2.75 NMAC that would allow the NMED to recoup the reasonable costs of operating the NMED’s Air Quality Bureau programs as required by the federal Clean Air Act and New Mexico Air Quality Control Act, respectively. The Environmental Improvement Act, Section 74-1-8(A) (4) NMSA 1978 and the Air Quality Control Act, Section 74-2-5 NMSA 1978 specifically authorize the Environmental Improvement Board to adopt rules that are necessary for air quality management as provided in the Air Quality Control Act.

The proposed repeal and replacements are required by the State Records Center and Archives under 1.24.11.9(C) NMAC to meet current style and formatting requirements. The proposed repeal and replacement for 20.2.71 NMAC (Operating Permit Emissions Fees) will update the fee pollutant definition to add “particulate matter 10 microns or less (PM₁₀)” and “particulate matter 2.5 microns or less (PM_{2.5})” and remove “total suspended particulate matter” and “mercury”; increase annual emissions fees to \$81.00 per ton for each fee pollutant and \$250.00 per ton of hazardous air pollutants; remove the

cap of six thousand tons that can be assessed a charge; allow charging the fee for the higher of the two PM₁₀ or PM_{2.5} emission rates to prevent double charging; remove the outdated mercury emission fee schedule; update annual Consumer Price Index (CPI) adjustments to prevent a decrease in revenues for years with no increase; add electronic invoices and payments as an acceptable form of invoicing and payment; and, add administrative compliance cost provisions. Additionally, the proposed repeal and replacement will include updates to Section 3 of 20.2.71 NMAC to incorporate the New Mexico Legislature’s statutory amendment to Paragraph (7) of Subsection B of 74-2-5 NMSA 1978. These increases will enable the NMED to comply with federal requirements to collect operating permit emissions fees sufficient to cover the reasonable costs of the Title V permitting program.

The proposed repeal and replacement for 20.2.75 NMAC (Construction Permit Fees) will increase the filing fee to \$2000 for each filing of a notice of intent, application for a permit to construct or modify a source, or revision of a permit; increase the accelerated review filing fee to \$5,000; update annual CPI adjustments to prevent a decrease in revenues for years with no increase; increase the point-based fee schedule value to 30 points for modeling review fees; increase the point-based value to 50 points separately for oil and gas general permits; increase the cost to the point-based value to \$510 per point; increase the annual fee to \$2,430; add electronic invoices and payments as an acceptable form of invoicing and payment; and, add administrative compliance cost provisions of up to \$15,000 per day. These increases will enable the NMED to comply with the Air Quality Control Act to collect sufficient fees to cover the reasonable costs of the construction permitting program and is considered a revision to the State Implementation Plan.

The proposed fee increases will enable the NMED to comply with the federal Clean Air Act and New Mexico Air Quality Control Act requirements to collect sufficient fees to cover the reasonable costs of the air program and is considered a revision to the State Implementation Plan and Title V program.

The proposed regulations may be reviewed during regular business hours at the NMED Air Quality Bureau office, 525 Camino de los Marquez, Santa Fe, New Mexico, on NMED’s website at <https://www.env.nm.gov/opf/docketed-matters/>, or by contacting Armando Paz at 505-629-3242 or armando.paz@env.nm.gov.

ENVIRONMENT DEPARTMENT

JUNTA DE MEJORA AMBIENTAL DE NUEVO MÉXICO AVISO DE AUDIENCIA PARA LA ELABORACIÓN DE NORMAS PARA CONSIDERAR LA PROPUESTA DE DEROGACIÓN Y REEMPLAZO DE 20.2.71 NMAC Y 20.2.75 NMAC

La Junta de Mejora Ambiental de Nuevo México (“Junta”) llevará a cabo una audiencia pública los días 27 de junio de 2024, a las 9:00 a. m., y continuará según lo disponga la Junta, en el edificio del Capitolio del Estado de Nuevo México, Sala 321, 490 Old Santa Fe Trail, Santa Fe, Nuevo México 87505.

El propósito de la audiencia es considerar el asunto de EIB 24-12(R), propuesta de derogación y reemplazo de las Regulaciones de Control de Calidad del Aire codificadas en el Código Administrativo de Nuevo México (NMAC, por sus siglas en inglés) en 20.2.71 NMAC (Tarifas de Emisiones de Permisos de Operación) y 20.2.75 NMAC (Tarifas de Permisos de Construcción). El proponente de estas derogaciones y reemplazos regulatorios es el Departamento de Medio Ambiente de Nuevo México

(“NMED” por sus siglas en inglés). El propósito de la audiencia pública es considerar y tomar posibles medidas sobre la petición del NMED para derogar y reemplazar 20.2.71 NMAC y 20.2.75 NMAC que permitiría al NMED recuperar los costos razonables de operar los programas de la Oficina de Calidad del Aire del NMED según lo exigen la Ley federal de Aire Limpio y la Ley de Control de Calidad del Aire de Nuevo México, respectivamente. 20.2.71 NMAC autoriza la evaluación de las tarifas anuales de permisos de operación para financiar el programa del Título V, de acuerdo con 40 CFR 70. 20.2.75 NMAC autoriza las tarifas anuales y de revisión de solicitudes de permisos de construcción para financiar el programa aéreo, de acuerdo con las Secciones 74 -2-7 y 74-2-15 NMSA 1978. La derogación y los reemplazos propuestos son requeridos por el Centro de Registros y Archivos del Estado según 1.24.11.9(C) NMAC para cumplir con los requisitos actuales de estilo y formato. Los aumentos de tarifas propuestos permitirán al NMED cumplir con los requisitos de la Ley de Aire Limpio federal y la Ley de Control de Calidad del Aire de Nuevo México para recaudar tarifas suficientes para cubrir los costos razonables del programa de y se considera una revisión del Plan Estatal de Aplicación y del programa del Título V.

La derogación y reemplazo propuestos para 20.2.71 NMAC (Tarifas de Emisiones de Permisos de Operación) actualizará la definición de contaminante de la tarifa para añadir “materia particulada de 10 micras o menos (PM_{10})” y “materia particulada de 2.5 micras o menos ($PM_{2.5}$)” y suprimir “total de materias particuladas” y “mercurio”; aumentar las tarifas de emisiones anuales a \$81.00 por tonelada por cada contaminante tarifario y \$250.00 por tonelada de contaminantes atmosféricos peligrosos; eliminar el límite de seis mil toneladas que se puede cobrar por contaminante y sustituir por el cobro de la tarifa por el mayor de los dos índices de emisión de PM_{10} o $PM_{2.5}$ para evitar el doble

cobro; suprimir la tarifa obsoleta de las emisiones de mercurio; actualizar los ajustes anuales del Índice de Precios al Consumidor (IPC) para evitar una disminución de los ingresos durante años sin aumento; añadir facturas y pagos electrónicos como forma aceptable de facturación y pago; y añadir disposiciones de costos de cumplimiento administrativo. Además, la derogación y reemplazo propuestos incluirán actualizaciones de la Sección 3 de 20.2.71 NMAC para incorporar la enmienda estatutaria de la Legislatura de Nuevo México al Párrafo (7) de la Subsección B de 74-2-5 NMSA 1978. Estos aumentos permitirán al NMED cumplir con los requisitos federales para cobrar tarifas por emisiones de permisos de operación suficientes para cubrir los costos razonables del programa de permisos del Título V. La derogación y reemplazo propuestos para 20.2.75 NMAC (Tarifas de Permisos de Construcción) aumentará la tarifa de presentación a \$2000 por cada presentación de un aviso de intención, solicitud de un permiso para construir o modificar una fuente, o revisión de un permiso; aumentar la tarifa de presentación de revisión acelerada a \$5,000; actualizar los ajustes anuales del IPC para evitar una disminución de los ingresos durante años sin aumento; aumentar el valor de la lista de tarifas basada en puntos a 30 puntos para las tarifas de revisión de modelos; aumentar el valor basado en puntos a 50 puntos por separado para permisos generales de petróleo y gas; aumentar el costo al valor basado en puntos a \$510 por punto; aumentar la tarifa anual a \$2,430; añadir facturas y pagos electrónicos como forma aceptable de facturación y pago; y añadir disposiciones de costos de cumplimiento administrativo de hasta \$15,000 por día. Estos aumentos permitirán al NMED cumplir con la Ley de Control de Calidad del Aire para recaudar tarifas suficientes para cubrir los costos razonables del programa de permisos de construcción y se considera una revisión del Plan de Implementación Estatal.

Las regulaciones propuestas pueden revisarse durante el horario normal de oficina en la Oficina de Calidad del Aire de NMED, 525 Camino de los Marquez, Santa Fe, Nuevo México, en el sitio web de NMED en <https://www.env.nm.gov/opf/docketed-matters/> o comunicándose con Armando Paz llamando al 505-629-3242 o en armando.paz@env.nm.gov.

La audiencia se llevará a cabo de conformidad con 20.1.1 NMAC Procedimientos de Elaboración de Normas Junta de Mejora Ambiental, la Ley de Mejora Ambiental, Sección 74-1-9 NMSA 1978, la Ley de Control de Calidad del Aire Sección 74-2-6 NMSA 1978 y otros procedimientos aplicables. La audiencia se llevará a cabo en un formato híbrido para permitir la participación tanto en persona como virtual.

A todas las personas interesadas se les dará una oportunidad razonable en la audiencia para presentar pruebas, datos, opiniones y argumentos relevantes, de forma oral y por escrito, presentar pruebas instrumentales e interrogar a los testigos. Las personas que deseen presentar testimonio técnico deben presentar ante la Junta una notificación por escrito de su intención de hacerlo. La notificación de intención deberá: (1) Identificar a la persona por quien los testigos testificarán; (2) Identificar cada testigo técnico que la persona pretende presentar y declarar las calificaciones del testigo, incluida una descripción de su historial académico y laboral; (3) Resumir o incluir una copia del testimonio directo de cada testigo técnico y declarar la duración prevista del testimonio de ese testigo; (4) Enumerar y describir, o adjuntar, cada prueba instrumental que se prevé ofrecerá esa persona en la audiencia; y (5) Adjuntar el texto de cualquier modificación recomendada a las regulaciones nuevas y revisadas propuestas.

Las notificaciones de intención de presentar testimonio técnico en la audiencia deben recibirse en la

Oficina de la Junta a más tardar a las 5:00 p. m. del 6 de junio de 2024, y deben hacer referencia al número de expediente, EIB 24-12(R) y la fecha de la audiencia. Los avisos de intención de presentar testimonio técnico deberán enviarse a: Pamela Jones, administradora de la Junta de Mejora Ambiental P.O. Box 5469 Santa Fe, Nuevo México 87502; Teléfono (505) 660-4305; Fax (505) 827-2836; correo electrónico: pamelajones@env.nm.gov.

Cualquier miembro del público en general podrá testificar en la audiencia. No se requiere notificación previa para presentar testimonios no técnicos en la audiencia. Cualquiera de dichos miembros también podrá ofrecer pruebas instrumentales en relación con ese testimonio, siempre que la prueba instrumental no sea una repetición excesiva del testimonio. El público en general que desee presentar una declaración por escrito para que conste en acta, en lugar de proporcionar un testimonio oral en la audiencia, deberá presentar la declaración por escrito antes de la audiencia o presentarla durante la audiencia.

Desde ahora hasta la conclusión de la audiencia, los comentarios públicos se enviarán por correo electrónico o por correo postal a Pamela Jones, P.O. Box 5469, 1190 St. Francis Drive, S-2103, Santa Fe, NM 87502. Los comentarios recibidos una vez concluida la audiencia no se tendrán en cuenta.

Las personas con discapacidad que necesiten un lector, un amplificador, un intérprete de lenguaje de señas calificado o cualquier otra forma de ayuda o dispositivo auxiliar para asistir o participar en la audiencia deben comunicarse con Pamela Jones a más tardar el 6 de junio de 2024 llamando al (505) 660-4305 o en pamelajones@env.nm.gov.

La Junta puede tomar una decisión sobre las regulaciones propuestas al concluir la audiencia, o la Junta puede convocar una reunión después de la

audiencia para considerar la acción sobre la propuesta.

El NMED no discrimina por motivos de raza, color, nacionalidad, discapacidad, edad o sexo en la administración de sus programas o actividades, como lo exigen las leyes y reglamentos aplicables. El NMED es responsable de la coordinación de los esfuerzos de cumplimiento y la recepción de las consultas relativas a los requisitos de no discriminación implementados por 40 C.F.R. Partes 5 y 7, incluyendo el Título VI de la Ley de Derechos Civiles de 1964, con sus enmiendas; la Sección 504 de la Ley de Rehabilitación de 1973; la Ley de Discriminación por Edad de 1975, el Título IX de las Enmiendas de Educación de 1972, y la Sección 13 de las Enmiendas de la Ley Federal de Control de Contaminación del Agua de 1972. Si tiene alguna pregunta sobre este aviso o cualquiera de los programas, políticas o procedimientos de no discriminación del NMED, o si cree que ha sido discriminado con respecto a un programa o actividad del NMED, puede ponerse en contacto con: Kate Cardenas, coordinadora de no discriminación, NMED, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855, nd.coordinator@env.nm.gov.

Si cree que ha sido discriminado con respecto a un programa o actividad de NMED, puede comunicarse con el Coordinador de No Discriminación identificado anteriormente o visitar nuestro sitio web en <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> para saber cómo y dónde presentar una denuncia por discriminación.

HUMAN SERVICES DEPARTMENT MEDICAL SERVICES DIVISION

NOTICE OF RULEMAKING

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is

proposing to amend the New Mexico Administrative Code (NMAC) rule 8.310.10, Health Care Professional Services, Health Home Services, to include substance use disorder (SUD) within recipient eligibility criteria.

Section 9-8-6 NMSA 1978, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: April 23, 2024
Hearing Date: May 23, 2024
Adoption Date: Proposed as August 1, 2024
Technical Citations: New Mexico State Plan Amendment NM-21-0005

The Department is proposing to amend the rule as follows:

8.310.10 NMAC

Section 1 is being amended to reflect the change from the Human Services Department (HSD) to the Health Care Authority (HCA).

Section 8 is amended to reflect the new mission statement for the Health Care Authority.

Section 12 is amended to reflect substance use disorder (SUD) as an allowable diagnosis for recipient eligibility.

Throughout the NMAC amendments have been made to comply with formatting and language requirements.

RULE

These proposed rule changes will be contained in 8.310.10 NMAC. This register and the proposed rule are available on the HSD website at: <https://www.hsd.state.nm.us/lookingforinformation/register/> and <https://www.hsd.state.nm.us/2024-comment-period-open/>. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting MAD at (505) 827-1337.

EFFECTIVE DATE

The Department proposes to implement these amendments effective August 1, 2024.

PUBLIC HEARING

A public hearing to receive testimony on this proposed rule will be held on **May 23, 2024 at 9:00 a.m.** The hearing will be held at the Administrative Services Division (ASD), 1474 Rodeo Rd., Santa Fe, NM 87505 and via conference call. Conference phone number: 1-800-747-5150. Access Code: 2284263.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact the MAD in Santa Fe at (505) 827-1337. The Department requests at least 10 working days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by MAD upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

ADDRESS

Interested persons may address written comments to:
Human Services Department
Office of the Secretary
Attn: Medical Assistance Division
Public Comments
P.O. Box 2348
Santa Fe, New Mexico 87504-2348

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: HSD-madrules@hsd.nm.gov. Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MT on May 23, 2024. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written

comments received will be posted as they are received on the HSD website at <https://www.hsd.state.nm.us/2024-comment-period-open/> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

**PUBLIC EDUCATION
DEPARTMENT****NOTICE OF PROPOSED
RULEMAKING****Public Hearing**

The New Mexico Public Education Department (PED) gives notice on Tuesday, April 23, 2024, that it will conduct a public hearing for the following proposed rulemaking on Wednesday, May 29, 2024, from 1:30 p.m. to 2:30 p.m. (MDT) in Mabry Hall, located in the Jerry Apodaca Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico 87501:

**New Rule 6.12.16 NMAC, Healthy
Universal School Meals**

The PED will give a verbal summary statement, on record, at the hearing.

The purpose of the public hearing is to receive public input on the proposed rulemaking. Attendees who wish to provide public comment on record will be given three minutes to make a statement concerning the proposed rulemaking. To submit written comment, please see the Public Comment section of this notice.

**Explanation of Purpose of
Rulemaking, Summary of Text, and
Statutory Authority****6.12.16 NMAC, Healthy Universal
School Meals**

Explanation: The purpose of the proposed rule is to establish the standards and procedures for certification to implement the Healthy, Hunger-Free Students' Bill of Rights Act.

Summary: The proposed new rule establishes the process by which school food authorities demonstrate compliance and earn certification to establish a healthy universal school meals program. The rule also explains the program's funding mechanism and distribution.

Statutory Authority: Sections 9-24-8, 22-2-1, 22-2-2, 22-13-13, 22-13-13.2, and 22-13C-1 et seq. NMSA 1978.

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

Public Comment

Interested parties may provide comment at the public hearing or may submit written comments by mail or e-mail.

Mailing Address

Policy and Legislative Affairs
Division
New Mexico Public Education
Department
300 Don Gaspar Avenue, Room 121
Santa Fe, New Mexico 87501

E-Mail Address

Rule.Feedback@ped.nm.gov

Written comments must be received no later than 5 p.m. (MDT) on Wednesday, May 29, 2024. The PED encourages early submission of written comments.

Public Comment Period

The public comment period is from Tuesday, April 23, 2024, to Wednesday, May 29, 2024, 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 of the proposed rulemaking at a later date.

Copies of the proposed rule may be obtained from Denise Terrazas at (505) 470-5303 during regular business hours or may be accessed through the PED Policy and Legislative Affairs webpage

titled, "Proposed Rules," at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>.

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 Denise Terrazas at (505) 470-5303 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.

TAXATION AND REVENUE DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

The New Mexico Taxation and Revenue Department hereby gives notice as required under Section 14-4-5.2 NMSA 1978 and 1.24.25.11 NMAC that it proposes to amend/repeal/replace and enact certain rules and regulations pertaining to the property tax veteran exemption under Section 7-37-5 NMSA 1978 under the Imposition of Property Tax Act. The State Records Center and Archives Administrative Law Division is requiring a repeal and replace of the entire regulation part Title 3 - Taxation, Chapter 6 - Property Taxes, Part 6 - Provisions for Imposition of Tax - Applicability in order to make this amendment. See, Subsection C of 1.24.11.9 NMAC:

Summary of Proposed Changes:

The New Mexico Taxation and Revenue Department proposes to amend and enact the following rule(s):

Imposition of Property Tax Act

Repeal and replace 3.6.6 NMAC. The only changes in language are to the following language, so for ease of reference these changes are shown as amendments, see below on where to locate copies of the proposed rules:

Section 7-37-5 NMSA 1978
3.6.6.12 - *Veteran Exemption*

Section 7-37-5.1 NMSA 1978
3.6.6.13 - *Disabled Veteran Exemption*

Technical Information: No technical information was consulted in drafting these proposed rule changes.

Purpose of Proposed Rule: The proposed repeal and replace is in accordance with the SRCA requirements. The only amendments being made are to Regulations 3.6.6.12 and 3.6.6.13 NMAC in order to align the language to the last statutory changes that took place. Section 7-37-5 NMSA 1978 (2005) and Section 7-37.5.1 NMSA 1978 (2015), regarding the property tax exemption for veterans and disabled veterans.

Notice of Public Rule Hearing: A public hearing will be held on the proposed rule changes on Thursday, May 23, 2024, from 10 AM to 11 AM at the 3rd floor in the Montoya Building, 1100 South St. Francis Drive, Santa Fe, New Mexico 87504. The hearing will be recorded, and oral comments can be made during the public hearing. Written comments can be submitted as outlined at the end of this notice.

Virtual meeting access also available using Join Zoom Meeting:
<https://us02web.zoom.us/j/6586491797?pwd=QldaSFM5ZXZlaUNXU3dKNWxuZlg3dz09&omn=89327804091>
Meeting ID: 658 649 1797
Passcode: 87504

The rule proposals were placed on file in the Office of the Secretary on April 8, 2024. Pursuant to Regulation 3.1.2.9 NMAC under Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of the proposals, if filed, will be filed as required by law on or about June 25, 2024.

Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Bobbie Marquez at BobbieJ.Marquez@tax.nm.gov. The Taxation and Revenue Department will make every effort to accommodate all reasonable requests but cannot guarantee accommodation of a request that is not received at least ten calendar days prior to the scheduled hearing.

Copies of the proposed rules may be found at: <https://www.tax.newmexico.gov/all-nm-taxes/proposed-regulations-hearing-notices/> or are available upon request by contacting the Tax Policy Office at policy.office@tax.nm.gov.

Notice of Acceptance of Written Public Comment: Written comments on the proposals can be submitted by email to policy.office@tax.nm.gov or by mail to the Taxation and Revenue Department, Tax Information and Policy Office, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or by 5PM on Thursday, May 23, 2024. All written comments received by the agency will be posted on <https://www.tax.newmexico.gov/all-nm-taxes/proposed-regulations-hearing-notices/> no more than 3 business days following receipt to allow for public review.

WORKFORCE SOLUTIONS, DEPARTMENT OF

NOTICE OF RULEMAKING AND PUBLIC HEARING

The New Mexico Department of Workforce Solutions ("Department" or "NMDWS") hereby gives notice that the Department will conduct a public hearing at the Leo Griego Auditorium located in the State Personnel Office (Willie Ortiz Building) at 2600 Cerrillos Road in Santa Fe, New Mexico, 87505 on May 30, 2024 from 1:00 pm to 3:00 pm.

Summary: The proposed regulation amends 11.2.3.29 NMAC, the Energy Transition Act subsection of the State Apprenticeship Policy Manual, to include the specific apprentice requirements for applicable projects and to clarify the responsibilities of NMDWS in enforcing the apprentice ratio.

Under NMSA 1978 §62-13-16(C), NMDWS is the agency responsible for promulgating rules to ensure compliance with this section of the Energy Transition Act.

Interested individuals are encouraged to submit written comments to the New Mexico Department of Workforce Solutions, P.O. Box 1928, Albuquerque, N.M., 87103, attention Andrea Christman prior to the hearing for consideration. Alternatively, written comments may be submitted via email to andrea.christman@dws.nm.gov. Comments must be received no later than 5 p.m. on May 29, 2024.

Copies of the proposed rule may be accessed online at <https://www.dws.state.nm.us/> or obtained by calling Andrea Christman at (505) 841-8478 or sending an email to Andrea.Christman@state.nm.us. The proposed rule will be made available at least thirty days prior to the hearing.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Ms. Christman as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

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

This Page Intentionally Left Blank

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.

**REGULATION
AND LICENSING
DEPARTMENT
HOME INSPECTORS BOARD**

**This is an amendment to 16.66.1
NMAC Sections 7, 9, and 13
effective 4/23/2024**

16.66.1.7 DEFINITIONS:

These rules adopt, as if stated herein, all of the definitions contained in Section 61-24D-2 NMSA 1978.

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

(1) **“Access panel”** means a panel provided for homeowner inspection and maintenance that has removable or operable fasteners or latch devices in order to be lifted off, swung open, or otherwise removed by one person. Its edges and fasteners are not painted in place. Access panels are limited to those panels within normal reach at human height or from a stepladder, and those which are not blocked by stored items, furniture, or building components.

(2) **“Adverse condition”** means a condition which is producing, or which has the potential to produce, a detrimental effect on a system or component that either impairs the system or component’s normally intended function or operation or which is inconsistent with generally established practice(s) regarding the historically or conventionally applied and acknowledged methods of installation, assembly, and operation or use.

(3) **“Alarm”** means a warning device that is either permanently installed or freestanding, including but not limited to smoke detectors and alarms, carbon-monoxide detectors, flue gas and other spillage detectors, security

equipment, ejector pumps, and smoke alarms.

(4) **“Ancillary services”** means a service or inspection provided by a licensee or other provider but beyond the scope of the standards of practice for home inspection provided in 16.66.7 NMAC including but not limited to mold inspection, lead paint assessment, commercial building inspection, pool and spa inspection, termite inspection, and other ancillary services.

(5) **“Appliance”** means a permanently installed household device powered by electricity or gas, but not including central heating, central cooling, or plumbing components.

(6) **“Architectural service”** means any practice involving the art and science of building design for construction of any structure or grouping of structures, and the use of space within and surrounding the structures or the design, design development, preparation of construction contract documents, and administration of the construction contract.

(7) **“Automatic safety controls”** means devices designed and installed to protect systems and components.

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

(1) **“Board”** means the New Mexico home inspectors board.

(2) **“Board approved examination”** means an examination that has been third-party accredited as complying with the prevailing standards of the *Standards for Educational and Psychological Testing* as published in 2014 by the American educational research association et. al.

(3) **“Business relationship”** means a former, current or prospective relationship between a person or a person’s licensed agent, a home inspection company and its clients, a home inspection company and the company providing ancillary services, and between a client and a company providing ancillary services. The business relationship is based upon a financial contract between a person and a consumer which is in force including those relationships in which the individual benefits by receiving a salary, royalty, intellectual property rights, consulting fee, honoraria, ownership interest (e.g., stocks, stock options or other ownership interest, excluding diversified mutual funds), or other financial benefit. A former relationship if it occurred within a 12-month time period of the contract, a current or prospective relationship shall be disclosed in writing to the client and the client must acknowledge in writing receipt and acceptance of the disclosure. The receipt and acceptance of the disclosure may be by electronic signature.

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

(1) **“Component”** means a constituent element or part of a system.

(2) **“Concealed, latent, or intermittent condition”** means any condition affecting any system or component which occurs after the inspection or is intermittent or otherwise not reasonably detectable by a competent and professional home inspector for any reason during the inspection.

(3) **“Condition”** means the visible and conspicuous state of being of an object regarding its appearance, quality, or working order.

(4) **“Cooling and air conditioning”** means:

(a) designed to be permanently installed for central cooling and or heating (ducted) or modular (non-ducted) systems. Systems may include evaporator coil(s), condenser unit(s), heat pump(s), air handler(s) and furnace(s) or

(b) permanently installed evaporative cooling ducted systems. This definition does not include cooling units or appliances that are designed and intended to be portable, non-permanent and are designed for installation at windows.

(5) **“Cosmetic imperfection”** means an irregularity or imperfection which does not affect a component’s normally intended function or operation, and which could but is not required to be repaired.

(6) **“Crawlspace”** or **“underfloor crawlspace”** means the area within the confines of the foundation and between the ground and the underside of the lowest floor’s structural components.

D. Definitions beginning with the letter “D”:

(1) **“Describe”** means to document in writing.

(2) **“Dismantle”** means the act of taking apart or removing any component, device, or piece of equipment that is bolted, screwed, or fastened by other means and which would not otherwise be taken apart or removed by a homeowner in the course of normal household maintenance.

E. Definitions beginning with the letter “E”:

(1) **“Electronic signature”** means an electronic sound, signal, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(+)(2) **“Engineering”** means the application of scientific knowledge for the design,

control, or use of building structures, equipment, or apparatus.

(-)(3) **“Engineering service”** means any professional service or creative work requiring engineering education, training and experience, and the application of special knowledge of the mathematical, physical and engineering sciences to such professional service or creative work as consultation, investigation, evaluation, planning, design and supervision of construction for the purpose of assuring compliance with the specifications and design, in conjunction with structures, buildings, machines, equipment, works or processes.

F. Definitions beginning with the letter “F”:

(1) **“Foundation”** means the base upon which a structure or wall rests, typically constituted by masonry, concrete, or stone, and typically located at least partially underground.

(2) **“Fuel burning appliance”** means any natural gas, LP gas, wood, coal, or other similar organic fuel burning device or appliance, including but not limited to fireplaces, whether masonry or factory built; fireplace inserts and stoves, woodstoves (room heaters), central furnaces, and combinations of said devices or appliances.

(3) **“Function”** means the action for which an item, component, or system is specially fitted or used, or for which an item, component, or system exists.

(4) **“Functional”** means the ability of an item, component, or system to perform its function.

(5) **“Functional drainage”** means the act or ability of a drain to empty in a reasonable amount of time without overflowing when another fixture is drained simultaneously.

(6) **“Functional flow”** means a reasonable flow at the highest fixture in a dwelling when another fixture is operated simultaneously.

(7) **“Further evaluation”** means examination and analysis by a qualified professional, tradesman, or service technician beyond that provided by a home inspection. Further evaluation may provide additional clarification, provide needed repairs, or discover additional adverse conditions that need modifications or repairs for the component or system to perform its normally intended function or operation provided by an appropriately licensed or qualified individual.

G. Definitions beginning with the letter “G”:
“Generally established practice” means a practice of or pertaining to one or more of the following: the historically or conventionally applied and acknowledged methods of installation, assembly, and operation or use of residential systems and their related materials and components. Generally established practices may vary based on whether they were applicable at the time of construction or whether modifications to the property were made after the original construction.

H. Definitions beginning with the letter “H”:

(1) **“Home inspection”**, as defined by Subsection [E] F of Section 61-24D-2 NMSA 1978, means a noninvasive, nondestructive examination by a person of the interior and exterior components of a residential real property, including the property’s structural components, [heating,] foundation and roof, for the purposes of providing a professional written opinion regarding the site aspects and condition of the property and its attached or detached carports, garages and reasonably accessible installed components. “Home inspection” includes the examination of the property’s heating, cooling, plumbing and electrical systems, including the operational condition of the systems’ controls that are normally operated by a property owner.

(2) **“Home inspector”**, as defined by Subsection [F] G of Section 61-24D-2 NMSA

1978, means a person who performs home inspections for compensation.

I. Definitions beginning with the letter “I”:

(1) **“Identify”** means to describe a specific system or component by its type and to distinguish it by characteristics such as general or specific materials, energy sources, etc., which differentiate that system of components from other similar systems and components.

(2) **“Inspected Property”** means the readily accessible areas of the buildings, site, items, components and systems included in the Home Inspection.

~~(3) —“Inter-NACHI examination” means the examination offered, conducted, and proctored by the international association of certified home inspectors (Inter-NACHI).]~~

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

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

L. Definitions beginning with the letter “L”:
(1)

“Licensure by credentials” means the process by which an individual applicant applies for a license as a home inspector in New Mexico on the basis of the applicant’s pre-existing license in another jurisdiction.

(2) **“Licensure by training and examination”** means the process by which an individual applicant applies for a license in New Mexico as a home inspector on the basis of the applicant’s education, training, and passage of ~~[the national home-inspector examination (NHHE) or the proctored Inter-NACHI examination.]~~ a board approved examination.

(3) **“Licensure by experience and examination”** means the process by which an individual applicant applies for a license in New Mexico as a home inspector on the basis of the applicant’s previous work in New Mexico as a home inspector in each of

the 24 months immediately preceding January 1, 2020, the applicant’s performance of at least 100 home inspections for compensation in the 24 months immediately preceding January 1, 2020, and the applicant’s passage of a ~~[national home-inspector examination, whether the NHHE or the proctored Inter-NACHI examination]~~ a board approved examination.

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

N. Definitions beginning with the letter “N”:
~~(1) —“National home-inspector examination” or “NHHE” means the examination offered, conducted, and proctored by the examination board of professional home inspectors (EBPH); or the examination offered, conducted, and proctored by the international association of certified home inspectors (Inter-NACHI).]~~

~~(2) (1) “Normal operating controls”~~ means thermostats, switches, valves, and other devices intended by design and manufacture to be used by homeowners or occupants in the normal and regular day-to-day operation of systems or components.

~~(3) (2) “Normally intended function or operation”~~ means the customary or conventional purpose or use for which a system or component is installed and for which it is designed or intended by its manufacturer.

O. Definitions beginning with the letter “O”:

(1) **“On-site water supply quality”** means water quality based on the bacterial, chemical, mineral, and solids content of the water.

(2) **“On-site water supply quantity”** means the rate of flow of water.

P. Definitions beginning with the letter “P”:

(1) **“Permanently installed”** means an item, system, or component designed or intended to remain where originally placed, not easily moved, and which is attached, connected, or set in

place for use so as to render moving or removing the item, system, or component impossible without the use of tools or equipment.

(2) **“Pre-inspection agreement”** means a signed agreement between the home inspector and their client executed prior to the commencement of the inspection detailing the services that the home inspector will provide.

~~(3) (3)~~ **“Proctored examination”** means a test taken under the supervision of testing staff. The proctor’s function is to ensure procedural integrity and security of the examination in a secure environment. Examination passage must be in writing and written by the organization or entity that administered the examination.

~~(3) (4)~~ **“Professional liability insurance”** means errors and omissions insurance.

Q. Definitions beginning with the letter “Q”:
“Qualified” means having the training, skills, knowledge, expertise, competence and any special tools or equipment necessary to address adverse conditions and routine maintenance conditions and, where applicable, holding all required licenses and meeting all applicable industry standards and all governmental and statutory requirements.

R. Definitions beginning with the letter “R”:

(1) **“Reactivation”** means the process and board act of reactivating an inactive or expired license, thereby permitting the licensee to engage in the practice of home inspection.

(2) **“Readily accessible”** means visually observable and able to be examined without requiring destructive measures; without risk to the inspector or others; without risk of damage to any item of personal or real property; without requiring the inspector to move, remove, damage, or disturb any wall, floor, ceiling, or window coverings; or any interior or exterior claddings or finish treatments; to move, remove, damage, disturb, climb upon, climb

over, or straddle any item of personal property; to move, remove, damage, or disturb any landscape elements; or to interrupt the business of occupants, and not requiring disassembly or the use of any special protective clothing or special tools or equipment.

(3) **“Readily openable access panel”** means a panel located within normal reach or from a four-foot stepladder, and which is not blocked by stored items, furniture, or building components, provided for homeowner inspection and maintenance that has removable or operable fasteners or latch devices in order to be lifted off, swung open, or otherwise removed by one person, and its edges and fasteners are not painted in place, but not including electrical panel board enclosure dead front covers.

(4) **“Residential recreational facilities”** means residential spas, saunas, steam baths, swimming pools, exercise, entertainment, athletic, playground and other similar equipment, and associated accessories that are installed at the inspected property.

(5) **“Reinstatement”** means the process and board act of reinstating a suspended or revoked license, thereby permitting the licensee to engage in the practice of home inspection either with or without future conditions.

(6) **“Representative number”** means all readily accessible identical components such as windows, electric switches and electric receptacles that serve as a typical or characteristic example of the items or components inspected. When one or a number of components or systems has identified “adverse conditions,” the report should indicate further evaluation of all identical components by qualified personnel.

(7) **“Roof drainage systems”** means gutters, downspouts, leaders, splash blocks, and similar components used to carry water off a roof and away from a building.

(8) **“Routine maintenance”** means typical, regular,

ongoing, and expected maintenance that is part of an ongoing and prudent overall property and building systems upkeep program.

S. Definitions beginning with the letter “S”:

(1) **“Safety glazing”** means tempered glass, laminated glass, or rigid plastic.

(2) **“Shut down”** means a piece of equipment whose safety switch or circuit breaker is in the “off” position, or its fuse is missing or blown, or a system that cannot be operated by the device or control that a homeowner should normally use to operate it.

(3) **“Structural component”** means a component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads). For purposes of this definition, a dead load is the fixed weight of a structure or piece of equipment, such as a roof structure on bearing walls, and a live load is a moving variable weight added to the dead load or intrinsic weight of a structure.

(4) **“System”** means a permanently-installed group of interacting, interrelated, or interdependent components historically and conventionally designed and intended to perform one or more specific functions.

T. Definitions beginning with the letter “T”:

“Technically exhaustive” means a comprehensive and detailed examination beyond the scope of a real estate home inspection that would involve or include, but would not be limited to: dismantling, specialized knowledge or training, special equipment, measurements, calculations, testing, research, analysis, or other means.

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

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

W. Definitions beginning with the letter “W”:
(1) **“Wall cladding”** means a protective or

insulating layer fixed to the outside of a building such as aluminum, brick, EIFS, stone, stucco, vinyl, or wood.

(2) **“Wiring method”** means the identification of electrical conductors or wires by their general type, such as nonmetallic sheathed cable, armored cable, and knob and tube.
[16.66.1.7 NMAC – N, 1/15/2021; A, 1/14/2022; A, 04/23/2024]

16.66.1.9 TELEPHONIC MEETING ATTENDANCE: A board member may participate in a board meeting by means of a conference telephone or similar communications equipment only when it is difficult or impossible for the board member to physically attend the meeting. ~~[A board member attending by means of conference telephone or similar communications equipment must attest in open session during the meeting that his or her in-person attendance was difficult or impossible.]~~
[16.66.1.9 NMAC – N, 1/15/2021; A, 04/23/2024]

16.66.1.13 RULE IMPLEMENTATION PERIOD:
A. ~~[Within six months of the effective date of these rules any]~~ Any individual engaged in the practice of home inspection in New Mexico shall be required to obtain a license issued by the board as a condition of engaging in the future practice of home inspection in New Mexico.

~~[(1) — On the date falling six months after the effective date of these rules or on the date declared by the Board in the event of a state of emergency as provided in subsection (2) of this rule, whichever is later]~~ Effective January 15, 2021, any individual engaged in the unlicensed practice of home inspection in New Mexico shall be subject to disciplinary action by the board. The board may also, as it deems appropriate, request the attorney general or district attorney of the judicial district in which the person resides or in which the violation is occurring or has occurred to maintain

an action in the name of the state to prosecute the unlicensed practitioner or to enjoin the act or practice.

~~[(2) Extension of Implementation Period due to State of Emergency: In the event that the Governor declares a state of emergency due to the spread of an infectious disease that extends beyond the six months provided for in this rule, the Board may vote at an open meeting to extend the rule implementation period beyond those initial six months if, in the opinion of the Board, the state of emergency hinders prospective applicants from completing the necessary prerequisites to licensure. Any extension of the rule implementation period shall last no longer than 30 days after the expiration of the state of emergency declared by the Governor.]~~

B. Nothing in this rule permits any person engaged in the practice of home inspection, whether licensed or unlicensed, to violate the code of ethics or standards of conduct as adopted by the board, nor does it permit such a person to violate the Home Inspector Licensing Act. Any action in violation of these rules or the Home Inspector Licensing Act may be considered by the board as part of an individual's application for licensure. [16.66.1.13 NMAC – N, 1/15/2021; A, 04/23/2024]

REGULATION AND LICENSING DEPARTMENT HOME INSPECTORS BOARD

This is an amendment to 16.66.2 NMAC Section 8 effective 4/23/2024

16.66.2.8 FEES: The board shall establish, charge and collect:

- A.** For each initial application for a home inspector license, a fee of \$250;
- B.** For an initial three-year license, a fee of \$1,000. ~~[If a new licensee receives an initial one- or a two-year license pursuant to Part 3 of these rules, this fee shall be prorated as follows:~~

~~(1) For an initial one-year license, a fee of \$333;~~
~~(2) For an initial two-year license, a fee of \$666;]~~

- C.** For renewal of a three-year license, a fee of \$1,000;
- D.** For reactivation of an inactive license, a fee of \$50;
- E.** For reactivation of an expired license, a fee of \$100;
- F.** For reinstatement of a suspended or revoked license, a fee of \$200;
- G.** For each duplicate license issued because a license is lost or destroyed, a fee of \$50, provided that the licensee shall submit an affidavit attesting to the loss or destruction of the license before the board issues a duplicate license.
- H.** Administrative fee for Licensee List, a fee of \$100 [16.66.2.8 NMAC – N, 1/15/2021; A, 04/23/2024]

REGULATION AND LICENSING DEPARTMENT HOME INSPECTORS BOARD

This is an amendment to 16.66.3 NMAC Sections 8, 9, 10, 11, 12, 14 and 15 effective 4/23/2024

16.66.3.8 APPLICATION FOR LICENSURE BY TRAINING AND EXAMINATION:

- A.** The board shall issue a license to an applicant for licensure by training and examination if the applicant fulfills the following requirements and provides the following information and evidence:
 - (1)** Completion of the board-issued application form;
 - (2)** Payment of the non-refundable application fee in full as provided in Part 2;
 - (3)** Provision to the board of the applicant's fingerprints and all information necessary for the board to complete a state and national criminal background check;

- (4)** Provision to the board of sufficient documentation to establish that the applicant is at least 18 years of age;
- (5)** Completion of at least 80 hours of classroom training:
 - (a)** The cumulative total of 80 hours of classroom training must include all of the following subjects:
 - (i)** Site characteristics and exterior;
 - (ii)** Structural components;
 - (iii)** Roofing;
 - (iv)** Plumbing;
 - (v)** Electrical;
 - (vi)** Heating, cooling, and air conditioning;
 - (vii)** Interiors, appliances, and garages;
 - (viii)** Insulation and ventilation;
 - (ix)** Fireplaces and fuel burning appliances;
 - (x)** New Mexico standards of practice and code of ethics;
 - (xi)** Business practices, including New Mexico rules and regulations, pre-inspection agreements, and report writing.
 - (b)** All 80 hours of classroom training must be obtained through an educational course that satisfies one of the following criteria:
 - (i)** The course is approved or accepted by another governmental state home inspector licensing authority;
 - (ii)** The course is approved by the United States department of education or the New Mexico department of education; or
 - (iii)** The course is designated as pre-licensing education and is certified or approved by any society, institute, council, or association of home inspectors;

(c) All 80 hours of classroom training may be completed online;

(6) Passage of [the national home inspector examination (NHIE); or the proctored home inspector examination of the international association of certified home inspectors (Inter-NACHI);] a board approved examination.

(7) Completion of a total of at least 80 hours of field training spent conducting a minimum of 30 parallel home inspections, evidenced by documents including, but not necessarily limited to, a completed board-issued inspection log, pre-inspection agreements, notarized affidavits, and other similarly-reliable evidence;

(8) Satisfactory evidence that the applicant has errors and omissions insurance coverage meeting the minimum terms and conditions required by [16.66.8] 16.66.9.9 NMAC; and

(9) Satisfactory evidence that the applicant has professional liability insurance coverage meeting the minimum terms and conditions required by [16.66.8] 16.66.9.10 NMAC.

B. For the purposes of this rule, parallel home inspections mean inspections that are either:

(1) Conducted in New Mexico prior to the effective date of this rule; or

(2) Those home inspections at which the applicant, for observational, experiential, and educational purposes, accompanied another home inspector who:

(a) Is legally engaged in the practice and profession of home inspection in the jurisdiction in which the home inspection is conducted;

(b) Has at least two years of experience in the profession of home inspection; and

(c) Has previously completed at least 100

home inspections for compensation. [16.66.3.8 NMAC – N, 1/15/2021; A, 1/14/2022; A, 04/23/2024]

16.66.3.9 APPLICATION FOR LICENSURE BY EXPERIENCE AND EXAMINATION:

A. An individual is eligible for licensure by experience and examination if the individual satisfies both of the following criteria:

(1) The applicant worked as a home inspector in each of the 24 months immediately preceding January 1, 2020; and

(2) The applicant performed at least 100 home inspections for compensation in the 24 months immediately preceding January 1, 2020.

B. The board shall issue a home inspector license to applicant for licensure by experience and examination if the applicant fulfills the following requirements and provides the following information and evidence:

(1) Completion of the board-issued application form;

(2) Payment of the non-refundable application fee in full as provided in Part 2;

(3) Provision to the board of the applicant’s fingerprints and all information necessary for the board to complete a state and national criminal background check;

(4) Provision to the board of sufficient documentation to establish that the applicant is at least 18 years of age and a legal resident of the United States;

(5) Passage of a [~~national home inspector examination. For the purposes of this rule, the applicant must either have passed the national home inspector examination (NHIE), or the proctored home inspector examination of the international association of certified home inspectors (Inter-NACHI);~~] board approved examination, subject to the following limitations:

(a) Evidence of the applicant’s examination passage must be in writing and written by the organization or entity that administered the examination; and

(b) The examination must have been proctored and the applicant must provide evidence as to this requirement.

(6) Satisfactory evidence that the applicant has errors and omissions insurance coverage and professional liability insurance coverage meeting the minimum terms and conditions required by [16.66.8] 16.66.9 NMAC; and

(7) Provision to the board of sufficient documentation and evidence to establish the applicant’s home inspector activities in the 24 months immediately preceding January 1, 2020. Such documentation may include, but is not limited to, tax records, notarized affidavits from persons other than the applicant, pre-inspection agreements, and other similarly reliable evidence of the applicant’s home inspection activities in the 24 months immediately preceding January 1, 2020.

C. For the purposes of this rule, the phrase “worked as a home inspector in each of the 24 months immediately preceding January 1, 2020” means having personally conducted any business activity directly associated with the profession of home inspection but is not limited to having conducted an actual home inspection. To qualify for licensure by experience and examination, an individual does not need to have personally conducted a home inspection in each of the 24 months immediately preceding January 1, 2020, if that individual conducted another business activity directly associated with the profession of home inspection during each of the 24 months.

[16.66.3.9 NMAC – N, 1/15/2021; A, 1/14/2022; A, 04/23/2024]

16.66.3.10 APPLICATION FOR LICENSURE BY CREDENTIALS:

A. An applicant who holds a license in good standing to practice as a home inspector in another state may be granted a license by virtue of the applicant’s credentials if the applicant’s resident state license requirements are the same as or similar to the requirements set forth in the Home Inspector Licensing Act as determined by the board.

B. An applicant applying for licensure on the basis of the applicant’s credentials as described in subsection A of this rule shall be required to provide to the board:

- (1) Completion of the board-issued application form;
- (2) Payment of the non-refundable application fee in full as provided in Part 2;
- (3) Provision to the board of the applicant’s fingerprints and all information necessary for the board to complete a state and national criminal background check;
- (4) Provision to the board of sufficient documentation to establish that the applicant is at least 18 years of age [and a legal resident of the United States];
- (5) A certificate, letter, or other documentation from the licensing authority in the applicant’s resident state attesting to the fact that the applicant holds a license in good standing to practice as a home inspector in that state;
- (6) Satisfactory evidence that the applicant has errors and omissions insurance coverage meeting the minimum terms and conditions required by [16.66.8] 16.66.9.9 NMAC; and
- (7) Satisfactory evidence that the applicant has professional liability insurance coverage meeting the minimum terms and conditions required by [16.66.8] 16.66.9.10 NMAC.

C. Pursuant to the Home Inspector Licensing Act, the board may negotiate agreements with other states or licensing jurisdictions to allow for reciprocity regarding licensure. A license granted pursuant to a reciprocity agreement shall be issued upon:

- (1) Completion of the board-issued application form;
 - (2) Payment of the non-refundable application fee in full as provided in Part 2;
 - (3) Provision to the board of the applicant’s fingerprints and all information necessary for the board to complete a state and national criminal background check;
 - (4) Provision to the board of sufficient documentation to establish that the applicant is at least 18 years of age [and a legal resident of the United States];
 - (5) The applicant’s provision to the board of a certificate, letter, or other documentation from the licensing authority in the applicant’s resident state attesting to the fact that the applicant holds a license in good standing to practice as a home inspector in that state.
 - (6) Satisfactory evidence that the applicant has errors and omissions insurance coverage meeting the minimum terms and conditions required by [16.66.8] 16.66.9.9 NMAC; and
 - (7) Satisfactory evidence that the applicant has professional liability insurance coverage meeting the minimum terms and conditions required by [16.66.8] 16.66.9.10 NMAC.
- [16.66.3.10 NMAC – N, 1/15/2021; A, 04/23/2024]
- 16.66.3.11 EXAMINATIONS:**
- A.** Licensure by training and examination: All applicants for licensure by training and examination must [either] pass [the national home inspector-

examination (NHHE) or the proctored examination of the international association of certified home inspectors (Inter-NACHI) following the date of application for licensure with the board or have previously passed the national home inspector examination (NHHE) or the proctored Inter-NACHI examination] a board approved examination prior to the date of the applicant’s application for licensure.

B. Licensure by experience and examination: All applicants for licensure by experience and examination must [either:] pass a board approved examination, subject to the following limitations:

- [(1)] — Pass the national home inspector examination (NHHE); or
- (2) — Have passed prior to the date falling six months after the effective date of these rules the proctored home inspector examination of the international association of certified home inspectors (Inter-NACHI) subject to the following limitations:
 - [(a)] (1) Evidence of the applicant’s examination passage must be in writing and written by the organization or entity that administered the examination; and
 - [(b)] (2) The examination must have been proctored and the applicant must provide evidence as to this requirement.

C. Licensure by credentials: Applicants for licensure by [licensure by] credentials are not required to provide the board with evidence as to prior examination passage. However, the board will consider whether the applicant’s prior licensing jurisdiction requires the passage of a national examination in determining whether the prior licensing jurisdiction’s standards are substantially equivalent to those in New Mexico.

D. It is the applicant’s responsibility to make all arrangements [with the examination board of professional home inspectors (EBPHI) to take the NHHE or with-

~~Inter-NACHI to take the proctored Inter-NACHI home inspectors examination]~~ to take a board approved examination.

E. The applicant shall send the applicant's examination score to the board, provided that the examination score must be in a document originally written by the organization or entity that administered the examination.

~~[F. Any applicant who fails the NHIE may retake the exam at the next available opportunity.]~~

[16.66.3.11 NMAC – N, 1/15/2021; A, 1/14/2022; A, 04/23/2024]

16.66.3.12 EXPEDITED LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES, CHILDREN, AND VETERANS:

A. Application requirements:

(1)

Applications for licensure shall be completed on a form provided by the Home Inspectors Board.

(2)

The applicant shall provide a complete application that includes the following information:

(a)

applicant's full name;

(b)

current mailing address;

(c)

current electronic mail address, if any;

(d)

date of birth;

(e)

background check, if required; and

(f)

proof as described in subsection C below.

(3)

The applicant shall provide the following satisfactory evidence as follows:

(a)

applicant is currently licensed and in good standing in another jurisdiction, including a branch of the United States armed forces;

(b)

applicant has met the minimal licensing requirements in that jurisdiction and the minimal licensing requirements in that jurisdiction are substantially equivalent to the

licensing requirements for New Mexico; and

(c)

the following documentation:

(i)

for military service member: a copy of military orders;

(ii)

for spouse of military service members: copy of military service member's military orders, and copy of marriage license;

(iii)

for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;

(iv)

for dependent children of military service members: a copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: a copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;

(v)

for veterans (retired or separated): a copy of DD 214 showing proof of honorable discharge.

(4)

The license shall be issued by the board as soon as practicable but no later than thirty days after a qualified military service member, spouse, dependent child, or veteran files a complete application and provides a background check if required for a license, and any required fees.

(5)

Military service members and veterans as defined in Subsection E of Section 61-1-34 NMSA 1978 shall not pay and the board shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.

(6)

A license issued pursuant to this section shall be valid for the time period that is specified in the Home Inspectors Licensing Act.

B. Renewal

requirements:

(1)

A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for

renewal set forth in 16.66.4.8 NMAC pursuant to 61-24D-8 NMSA 1978.

(2)

As a courtesy, the board will send via electronic mail license renewal notifications to licensees before the license expiration date to the last known email address on file with the board. Failure to receive the renewal notification shall not relieve the licensee of the responsibility of timely renewal on or before the expiration date.

[16.66.3.12 NMAC – N, 1/15/2021; A, 1/14/2022; A, 04/23/2024]

16.66.3.14 LICENSURE PROCEDURE:

A. Upon receipt of a completed application, including all required documentation and fees, the Board's application committee, should the Board choose in its discretion to utilize such a committee, may provide a non-binding and purely advisory recommendation as to whether the Board should grant or deny the application.

B. No license may be issued until the applicant has paid the non-refundable ~~[but potentially prorated as provided in these rules;]~~ initial license fee in full.

[16.66.3.14 NMAC – N, 1/15/2021; A, 04/23/2024]

16.66.3.15 POTENTIALLY DISQUALIFYING CRIMINAL CONVICTIONS:

A. Convictions for any of the following offenses, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an applicant from receiving or retaining a license issued by the board. This includes conviction of an offense which if committed in this state, would be deemed a felony under either state or federal law, without regard to its designation elsewhere. The term "conviction" shall include a finding or verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon or an appeal of the conviction has been sought.

(1) homicide, voluntary or involuntary manslaughter;

(2) trafficking in controlled substances, manufacturing of controlled substances or distribution of controlled substances;

(3) human trafficking, kidnapping, false imprisonment, aggravated assault or aggravated battery;

(4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses;

(5) crimes involving adult abuse, neglect, or financial exploitation;

(6) crimes involving child abuse or neglect;

(7) crimes involving robbery, larceny, extortion, burglary, possession of burglary tools, destruction of property, criminal damage to property, unlawful or dangerous uses of explosives, breaking and entering, arson, making a bomb scare, tampering with evidence or receiving stolen property;

(8) financial crimes involving fraud, forgery, embezzlement, credit card fraud,

B. The board shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

C. The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

D. Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Home Inspector Licensing Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual

was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this rule.

E. In connection with an application for licensure, the board/ commission shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

(1) an arrest not followed by a valid conviction;

(2) a conviction that has been sealed, dismissed, expunged or pardoned;

(3) a juvenile adjudication; or

(4) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of this rule. [16.66.3.15 NMAC – N, 1/14/2022; A, 04/23/2024]

**REGULATION
AND LICENSING
DEPARTMENT
HOME INSPECTORS BOARD**

This is an amendment to 16.66.4 NMAC Section 8 and 11 effective 4/23/2024

16.66.4.8 LICENSE RENEWAL:

A. ~~[A]~~ An initial home inspector license shall be valid ~~[during the dates specified in the license itself and as provided in these rules]~~ for three years. Once renewed, all licenses shall be for a duration of three years.

B. Renewal Date: A licensee may apply for renewal of the licensee's license no later than the date specified as the expiration date on the applicant's license.

C. A licensee seeking the renewal of the license shall provide to the board in accordance with the deadlines specified in this rule:

(1) A completed renewal application;

(2) Payment of the non-refundable renewal fee in full as provided in Part 2;

(3) Proof of completion of required continuing education as provided in Part 5;

~~[(4) Provision to the board of all information necessary for the board to complete a state and national criminal background check; and~~

~~(5) (4)~~ Satisfactory evidence that the licensee has errors and omissions insurance coverage and professional liability insurance coverage meeting the minimum terms and conditions required by ~~[16.66.8]~~ 16.66.9 NMAC.

D. The board office will send, either through electronic means or through postal mail, a renewal notice to each licensee no later than 45 days prior to the expiration of the license at the licensee's address on record. Timely renewal of a license is the full and complete responsibility of the licensee. If the licensee does not receive a renewal notification from the board, it is the responsibility of the licensee to contact the board office.

E. The licensee's failure to receive the board's renewal notification will not exempt the licensee from licensure expiration or late penalty fees.

F. Each licensee is responsible for submitting the required renewal fee by the expiration date irrespective of whether a renewal notice is received by the licensee, and licensees shall not practice on expired licenses under any circumstances. [16.66.4.8 NMAC – N, 1/15/2021; A, 04/23/2024]

16.66.4.11 REACTIVATION OF EXPIRED OR INACTIVE LICENSES: Former licensees may reactivate an expired or inactive license within the deadlines provided in these rules. A former licensee seeking the reactivation of an expired or inactive license shall provide to the board in accordance with the deadlines specified in these rules:

A. A completed renewal application;

B. Payment of the non-refundable renewal fee in full as provided in Part 2;

C. Payment of the expired license reactivation fee in full as provided in Part 2;

D. Proof of completion of all required continuing education;

~~E. — Provision to the board of all information necessary for the board to complete a state and national criminal background check.~~

E. Satisfactory evidence that the licensee has errors and omissions insurance coverage and professional liability insurance coverage meeting the minimum terms and conditions required by 16.66.9 NMAC.

[16.66.4.11 NMAC – N, 1/15/2021; A, 04/23/2024]

REGULATION AND LICENSING DEPARTMENT HOME INSPECTORS BOARD

This is an amendment to 16.66.5 NMAC Section 8 and 10 effective 4/23/2024

16.66.5.8 CONTINUING EDUCATION: As provided by the Home Inspector Licensing Act, all home inspectors shall be required to satisfy continuing education requirements in the interest of ensuring the highest quality professional services.

A. As a condition of license renewal, a home inspector licensee shall complete at least 60 hours of board-approved continuing education instruction that is related to the practice of home inspection during each three-year license period as outlined in 16.66.4.8 NMAC. This includes licensees holding initial licenses.

B. At least six hours of continuing education instruction during each three-year license period must be in ethics.

C. A licensee may take continuing education instruction online.

D. Initial licenses of a duration of less than three years: Those licensees possessing initial licenses of a duration of one or two

years shall complete a pro-rated amount of continuing education as follows:

(1) For licensees possessing an initial one year license, 20 hours of board-approved continuing education instruction that is related to the practice of home inspection, including at least two hours of ethics;

(2) For licensees possessing an initial two year license, 40 hours of board-approved continuing education instruction that is related to the practice of home inspection, including at least four hours of ethics.

E. Attendance at one New Mexico home inspector board meeting, rule hearing, or disciplinary hearing for at least three hours, or until the board meeting goes into closed session, or the hearing/ meeting ends, whichever comes first. Attendance may be by live meeting/ hearing or by live or recorded distance broadcast; but must be documented by signing into and out of the meeting/hearing. In the event of home inspector hardship, approved by the board, the home inspector board may authorize an equivalent to attendance at a board meeting by an online download, attendance at any approved equivalent, or by other approved participation.

[16.66.5.8 NMAC – N, 1/15/2021; A, 04/23/2024]

16.66.5.10 CONTINUING EDUCATION AUDITS: The board shall audit ten percent of renewal applications each year, selected anonymously and at random, to verify completion of continuing education. ~~[If the licensee is audited, proof of participation in or presentation of continuing education activity must be submitted along with a renewal form.]~~

A. If a notice of audit is received ~~[with the license renewal notice]~~, the licensee must submit evidence of continuing education hours earned during the current renewal cycle to the board as required in the Home Inspector Licensing Act and the board's rules.

~~B. [If the licensee is not audited, the licensee must.]~~ All licensees as a condition of renewal, attest to the completion of the required hours of continuing education. The licensee shall, throughout the period of each license, retain all documentation of continuing education attendance for the previous cycle of licensure.

C. The board may audit any licensee's continuing education attendance upon notification to the licensee.

D. Failure to comply with a notice of audit or submit evidence of continuing education hours earned during the current renewal cycle may result in disciplinary action by the board. [16.66.5.10 NMAC – N, 1/15/2021; A, 04/23/2024]

REGULATION AND LICENSING DEPARTMENT HOME INSPECTORS BOARD

This is an amendment to 16.66.8 NMAC Section 8, 9 and 10 effective 4/23/2024

16.66.8.8 GROUNDS FOR DISCIPLINARY ACTION: The following are grounds for taking disciplinary action against licensees and unlicensed practitioners, and for denying licenses to applicants:

A. Substantial misrepresentation;

B. Violations of the Home Inspector Licensing Act or any rule of the board, including but not limited to the code of ethics and standards of practice as outlined in Parts 5 and 6 of these rules;

C. Offered or delivered compensation, inducement, or reward to the owner of an inspected property or to the broker or the agent for the referral of any business to the home inspector or the home inspector's company;

D. A license to perform home inspections revoked, suspended, denied, stipulated or otherwise limited in any state, jurisdiction, territory

or possession of the United States or another country for actions of the licensee similar to acts proscribed in Section 61-24D-11 of the Home Inspector Licensing Act;

E. Failure to furnish the board, its investigators or its representatives with information requested by the board in the course of an official investigation;

F. Performance or offer to perform for an additional fee any repair to a structure on which the home inspector or the home inspector’s company has prepared a report at any time during the twelve months immediately prior to the repair or offer to repair, except that a home inspection company that is affiliated with or that retains a home inspector does not violate this paragraph if the home inspection company performs repairs pursuant to a claim made pursuant to the terms of a home inspection contract; or

G. Failure to maintain errors and omissions insurance and professional liability insurance as required by the Home Inspector Licensing Act and the rules of the board.

H. Failure to comply with a notice of audit or submit evidence of continuing education hours earned during the current renewal cycle may result in disciplinary action by the board. [16.66.8.8 NMAC – N, 1/15/2021; A, 04/23/2024]

16.66.8.9 COMPLAINTS AND RESPONSES:

A. A complaint against a licensee or applicant may be filed with the board by any person, office, or organization. [~~In order to be considered by the board, a complaint must be sworn and notarized.~~] The complaint must also contain specific factual allegations of violations of either the Home Inspector Licensing Act [~~or the~~] board’s rules, or code of ethics.

B. Upon receipt of any complaint alleging that a licensee has violated the Home Inspector Licensing Act [~~or the~~], board’s rules, or code of ethics, board staff

shall forward the complaint to the respective licensee and request a response [~~within ten business days of receipt~~]. The licensee (“respondent”) must provide a response to the board within ten business days of receipt. A respondent’s failure to respond to the complaint within this specified time frame shall be grounds for disciplinary action, up to and including revocation of the license at the discretion of the board.

C. The board administrator may authorize the issuance of an investigative subpoena to obtain documents or other evidence relevant to a disciplinary complaint.

D. Subject to applicable exceptions to confidentiality established by law, all complaints, responses, and other disciplinary and investigatory records are public records available for inspection and copying, pursuant to state law, irrespective of the final disposition of the underlying disciplinary complaint. [16.66.8.9 NMAC – N, 1/15/2021; A, 04/23/2024]

16.66.8.10 REVIEW OF COMPLAINT: All complaints [~~will, where practicable,~~] may be reviewed by the board’s complaint committee.

A. Should the board, in its discretion, choose to utilize a complaint committee, the complaint committee shall be responsible for reviewing disciplinary complaints against licensees and applicants and making informal, non-binding recommendations to the board as to their disposition. The complaint committee shall not have any policymaking authority of any kind.

B. The board’s complaint committee shall consist of no more than two board members and no more than two other volunteer members who are not members of the board, for a total of no more than four members at any given time.

C. After completing its review of a complaint, the complaint committee shall either recommend that the board take disciplinary action or that it close the case. As part of any recommendation of disciplinary

action, the complaint committee may also make recommendations as to the proper amount of discipline (i.e. letter of reprimand, fine, suspension, revocation, etc.), including discipline that might be obtained through a negotiated settlement agreement with the licensee, applicant, or unlicensed practitioner. [16.66.8.10 NMAC – N, 1/15/2021; A, 04/23/2024]

End of Adopted Rules

This Page Intentionally Left Blank

Other Material Related to Administrative Law

**REGULATION
AND LICENSING
DEPARTMENT
HOME INSPECTORS BOARD**

**NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The NMRLD - Home Inspectors Board gives Notice of a Minor, Nonsubstantive Correction to 16.66.1 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, as follows:

Section 13: In subsection A, as amended, there is a paragraph (1) without a paragraph (2). The errant paragraph (1) has been redone.

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

RACING COMMISSION

**NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The Racing Commission gives Notice of a Minor, Nonsubstantive Correction to 16.47.1 NMAC and 15.2.5 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, as follows:

16.47.1 NMAC

Section 18: The Section number and title “16.47.1.18 TESTING PROCEDURES” was inadvertently omitted. It was added back into all versions of this amendment.

15.2.5 NMAC

Section 13: In subsection E, paragraph (8), there is a subsection (a) without a subsection (b). The errant subsection (a) has been redone and item numbers (i) through (iii) were renumbered to subsections (a) through (c).

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

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

2024 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXXV, Issues 1-24

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

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 similar material. 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.srca.nm.gov/new-mexico-register/>. For further information, call 505-476-7941