

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 6 RISK MANAGEMENT
PART 3 BUDGETING AND PAYMENT OF ASSESSMENTS FOR UNEMPLOYMENT
COMPENSATION BENEFITS BY STATE AGENCIES AND LOCAL PUBLIC BODIES

1.6.3.1 ISSUING AGENCY: General Services Department (GSD) - Risk Management Division.
[1.6.3.1 NMAC - Rp, 1.6.3.1 NMAC, 12/11/2018]

1.6.3.2 SCOPE: Unless otherwise provided by law, this rule applies to all state agencies, including elected officials and institutions of higher learning, and all local public bodies. This rule supersedes and replaces all prior conflicting rules and directives.
[1.6.3.2 NMAC - Rp, 1.6.3.2 NMAC, 12/11/2018]

1.6.3.3 STATUTORY AUTHORITY: This rule is adopted pursuant to the authority of Section 9-17-5, 15-7-3, 51-1-17 and 51-1-46 NMSA 1978.
[1.6.3.3 NMAC - Rp, 1.6.3.3 NMAC, 12/11/2018]

1.6.3.4 DURATION: Permanent.
[1.6.3.4 NMAC - Rp, 1.6.3.4 NMAC, 12/11/2018]

1.6.3.5 EFFECTIVE DATE: December 11, 2018, unless a later date is cited at the end of a section or paragraph.
[1.6.3.5 NMAC - Rp, 1.6.3.5 NMAC, 12/11/2018]

1.6.3.6 OBJECTIVE: To provide a uniform system for assessing the cost of unemployment compensation benefits to state agencies and local public bodies, based on each covered entity's claims experience that will be sufficient to insure solvency of the fund(s). Further, to prescribe the methods for which local public bodies may enter and leave the local public body unemployment compensation reserve fund.
[1.6.3.6 NMAC - Rp, 1.6.3.6 NMAC, 12/11/2018]

1.6.3.7 DEFINITIONS:

A. “Fund” or “funds” means the state government unemployment compensation reserve fund or the local public body unemployment compensation reserve fund, or both, as the contract requires.

B. “Governmental entity” means the state or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more states or political subdivisions (Section 51-1-44B NMSA 1978).

C. “Local public body” means all political subdivisions of the state or any of their agencies, instrumentalities and institutions or any county hospitals, or outpatient clinics thereof, leased to, or operated under an agreement with, a state educational institution named in Article 12, Section 11 of the constitution of New Mexico. The term “local public body” shall not be construed to mean school districts.

D. “RMD” means the risk management division of the general services department.

E. “State” or “state agency” means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions, and all school districts of this state.

[1.6.3.7 NMAC - Rp, 1.6.3.7 NMAC, 12/11/2018]

1.6.3.8 GOVERNMENTAL ENTITY BUDGETS, RATES FOR UNEMPLOYMENT

COMPENSATION BENEFITS AND ADMINISTRATIVE EXPENSES: RMD shall prescribe annually before April 15, a schedule of minimum rates per employee to be budgeted by governmental entities for the succeeding year. Rates shall include administrative expenses. Rates shall be determined as follows.

A.A schedule of initial rates shall be developed by RMD to be used until governmental entities are experience rated. One initial rate shall apply to the state agencies in the state fund and another initial rate shall apply to local public bodies in the local public body fund.

B.Rate schedules to be used for those that are to be experience rated shall take into account the prior experience of the governmental entity, the amount of reserves the governmental entity has on deposit in the fund, and the balance in the fund. Separate schedules shall be developed for the state fund and the local public body fund.

C. RMD shall notify each participating entity of the rates to be used the next fiscal year by April 15; or as an alternative RMD may notify the state budget organization serving each entity of the rate for the entities they service.

[1.6.3.8 NMAC - Rp, 1.6.3.8 NMAC, 12/11/2018]

**1.6.3.9 PAYMENT OF BILLINGS; INTEREST CHARGE FOR LATE PAYMENT;
CANCELLATION OF LOCAL PUBLIC BODIES:**

A. The rate schedules will outline the percentage interest charge for late payments for participants in the state fund and local public body fund.

B. The rate schedule will outline how many days participants in the state account will have before payment is delinquent after the date assessment. Participants in the state fund are responsible for paying assessments and interest charges.

C. In accordance with 51-1-46 C NMSA 1978, the director of RMD shall terminate the participation of any local public body if the local public body fails to pay any assessment by RMD within 30 days of the assessment. A local public body may be reinstated without loss of coverage if the local public body pays all assessments and interest charges within 90 days of the billing of the assessment charge that were not paid.

[1.6.3.9 NMAC - Rp, 1.6.3.9 NMAC, 12/11/2018]

1.6.3.10 PENALTY FOR LATE REPORTING OF PAYROLL: RMD may, at RMD's option, bill any participant entity for the penalty imposed by RMD by the department of labor for an entities first late report in a fiscal year (Section 51-1-112A NMSA 1978). If the next quarter report is also late, RMD shall bill the entity for both late reports plus any additional late reports for the next quarters.

[1.6.3.10 NMAC - Rp, 1.6.3.10 NMAC, 12/11/2018]

1.6.3.11 EXPERIENCE HISTORY TRANSFER:

A. In the case of a total experience history transfer of a governmental entity, the experience history of the transferred entity will be transferred from the predecessor entity to the successor entity in total. The reserve account and the assessment rate will also be transferred in total.

B. When a governmental agency is taken over in total by two or more successor entities, the experience history of the predecessor shall be transferred to the two or more successors as in Subsection A above.

(1) The two or more successor entities shall determine the percentage of employees each received from the predecessor.

(2) This percentage shall be applied to the assessable wage, assessments charged, benefits paid and the reserve account. This formula shall be applied to all the successors and an assessment rate shall be arrived at in accordance with experience and rating requirements.

C. The applicable experience may be transferred to the partial successor in the case of partial transfer of the entity. Both the predecessor and the successor must continue in business with employees. The partial experience history shall be transferred to the successor using the same formula outlined in Paragraphs (1) and (2) of Subsection B of 1.6.3.11 NMAC above.

D. Benefits (total) charged to the predecessor's account by ESD shall be transferred as follows:

(1) In a total experience history transfer, all of the benefits charged shall be assumed by the successor.

(2) In the event the successor is made of two or more entities, they will assume all of the benefits charged to the predecessor. The successor entities shall divide the benefits charges of the predecessor by the percentage figures arrived at in Paragraph (1) of Subsection B of 1.6.3.11 NMAC above.

(3) When there is a partial history transfer and only one successor is involved, the percentage factor arrived at in 1.6.3.8 NMAC shall apply. Benefits charged to the predecessor's account shall be charged to the successor as follows:

(a) in the quarter in which the transfer occurred and in the first successive quarter, the percentage factor of the successor times the benefits charged the predecessor's account;

(b) in the second successive quarter, the percentage factor times seventy-five percent of the benefits charged the predecessor's account;

(c) in the third successive quarter, the percentage factor times fifty percent of the benefits charged the predecessor's account;

(d) in the fourth successive quarter, the percentage factor times twenty-five percent of the benefits charged the predecessor's account;

(e) the fifth and all other quarters will not have benefit charges relating to the predecessor except in unusual cases and such charges shall be transferred to the successor's account;
(f) the predecessor and all successors, when applicable, shall continue to be experienced-rated.

[1.6.3.11 NMAC - Rp, 1.6.3.11 NMAC, 12/11/2018]

1.6.3.12 ELIGIBILITY FOR LOCAL PUBLIC BODY UNEMPLOYMENT COMPENSATION

RESERVE FUND: To be eligible to participate in the local public body unemployment compensation reserve fund noted in accordance with Section 51-1-46 NMSA 1978, an entity must:

- A. Be a local public body as defined in 1.6.3.7 NMAC,
- B. Not have voluntarily left or have been removed from the local public body unemployment compensation fund, within the past five years.
- C. The local public body does not owe an outstanding financial obligation to RMD.
- D. Apply for participation at least 90 days prior to the new fiscal year and have this application approved by the risk management division.

[1.6.3.12 NMAC - Rp, 1.6.3.12 NMAC, 12/11/2018]

1.6.3.13 APPLICATION TO ENTER LOCAL PUBLIC BODY UNEMPLOYMENT COMPENSATION RESERVE FUND:

- A. The effective date of coverage for any local public body that enters the local public body unemployment compensation reserve fund shall be January 1.
- B. A local public body must submit an application to RMD to participate in the fund no later than September 30 of the year prior to entering the fund.
- C. Local public bodies shall submit the following information to RMD as part of the application:
 - (1) an application form available on the RMD website;
 - (2) acceptable proof that the entity is an eligible local public body as defined in 1.6.3.7 NMAC;
 - (3) the local public body's unemployment claims data for the previous five years;
 - (4) a written agreement that the local public body will stay in the local public body unemployment compensation reserve fund for the next five consecutive years;
 - (5) information on current employment statistics, employee salaries, and other similar information requested by the risk management division; and
 - (6) a written agreement to follow the obligations of local public body unemployment compensation reserve fund membership shown in 1.6.3.14 NMAC.
- D. RMD shall inform applicants of acceptance or rejection by December 1 of the year prior to entering the fund.

1.6.3.13 NMAC N, 12/11/2018

1.6.3.14 OBLIGATIONS OF LOCAL PUBLIC BODIES UPON ADMITTANCE TO THE LOCAL PUBLIC BODY UNEMPLOYMENT COMPENSATION RESERVE FUND:

- A. A local public body participating in the fund must meet all obligations to remain in good standing and continue participation.
- B. Obligations include:
 - (1) timely payment of premiums, administrative fees, assessments, fines, remittances, and similar obligations to the risk management division;
 - (2) complying with any loss control policies or administrative directives issued by RMD or by any permitted third-party;
 - (3) complying with rules, guidance, and administrative directions from the department of workforce solutions;
 - (4) preparing for, attending, and participating in training seminars, program meetings, hearings, and other similar events as directed by RMD or the department of workforce solutions; and
 - (5) agree to comply with RMD and department of workforce solutions determinations regarding a claimant's employment status, employment dates, salaries, separation circumstances, and other similar factors or to appeal determinations to the proper agency following established protocols.

[1.6.3.14 NMAC N, 12/11/2018]

1.6.3.15 NONCOMPLIANCE BY LOCAL PUBLIC BODIES AND TERMINATION OF PARTICIPATION:

A. The director of RMD has sole discretion to determine if a local public body is noncompliant and to terminate the participation of any local public body in accordance with this rule.

B. Upon a determination that a local public body is noncompliant, RMD shall inform the local public body in writing of the determination and the reasons for the finding.

C. Upon a determination that a local public body's participation will be terminated, RMD shall inform the local public body in writing that, effective December 31, it may no longer participate in the fund.

D. Any local public body that has been terminated from the local public body shall remain in the local public body unemployment compensation reserve fund until December 31 and shall comply with all participation obligations and directives from RMD through that date.

E. Upon termination, the local public body remains obligated to pay RMD for any unemployment claims with a date of loss prior to their effective date of removal.

F. On January 1 of the calendar year following termination, a local public body shall resume its sole responsibility to pay its unemployment claims to the department of workforce solutions.

[1.6.3.15 NMAC N, 12/11/2018]

1.6.3.16 VOLUNTARY DEPARTURE OF THE LOCAL PUBLIC BODY UNEMPLOYMENT COMPENSATION RESERVE FUND:

A. A local public body that participates in the local public body fund may voluntarily depart the fund if:

(1) the local public body has participated in the fund for at least the five consecutive years immediately preceding departure;

(2) the local public body applies for departure in writing before September 1 of the year it intends to depart, and

(3) the local public body has secured written approval to depart from RMD.

B. The last effective date of coverage for a local public body departing the fund in a given year shall be December 31 of the year of departure.

C. The local public body shall remain obligated to pay RMD for any claims with a date of loss prior to its departure from the fund on December 31.

D. Following departure, a local public body shall resume its sole responsibility to pay its unemployment claims to the department of workforce solutions on January 1.

[1.6.3.16 NMAC N, 12/11/2018]

History of 1.6.3 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives under: DFA Rule 78-7, department of finance and administration rule Relating to the Budgeting and Payment of Assessments for Unemployment Compensation Benefits By State Agencies and Local Public Bodies, filed 6/30/1978;

DFA Rule 78-7 amendment No. 1, filed 12/18/1978; DFA Rule 79-7, department of finance and administration rule Relating to the Budgeting and Payment of Assessments for Unemployment Compensation Benefits by State Agencies and Local Public Bodies, filed 5/18/1979;

DFA Rule 80-1, department of finance and administration rule Relating to the Budgeting and Payment of Assessments for Unemployment Compensation Benefits by State Agencies and Local Public Bodies, filed 3/26/1980;

GSD Rule 84-701, Budgeting and Payment of Assessments for Unemployment Compensation Benefits by State Agencies and Local Public Bodies, filed 4/4/1984;

GSD Rule 86-701, Budgeting and Payment of Assessments for Unemployment Compensation Benefits by State Agencies and Local Public Bodies, filed 6/30/1986; and

GSD Rule 94-701, Budgeting and Payment of Assessments for Unemployment Compensation Benefits by State Agencies and Local Public Bodies, filed 5/5/1994.

History of Repealed Material: 1.6.3 NMAC - Budgeting and Payment of Assessments for Unemployment Compensation Benefits by State Agencies and Local Public Bodies (filed 9/1/2004) repealed 12/11/2018.

Other History:

GSD Rule 94-701, Budgeting and Payment of Assessments for Unemployment Compensation Benefits by State Agencies and Local Public Bodies (filed 5/5/1994) was reformatted, renumbered, and replaced by 1 NMAC 6.3, Budgeting and Payment of Assessments for Unemployment Compensation Benefits by State Agencies and Local Public Bodies, effective 6/14/1997.

1 NMAC 6.3, Budgeting and Payment of Assessments for Unemployment Compensation Benefits by State Agencies and Local Public Bodies (filed 6/2/1997) was renumbered and reformatted to 1.6.3 NMAC, Budgeting and Payment of Assessments for Unemployment Compensation Benefits by State Agencies and Local Public Bodies, to comply with the current NMAC requirements, effective 9/15/2004.

1.6.3 NMAC - Budgeting and Payment of Assessments for Unemployment Compensation Benefits by State Agencies and Local Public Bodies (filed 9/1/2004) was replaced by 1.6.3 NMAC - Budgeting and Payment of Assessments for Unemployment Compensation Benefits by State Agencies and Local Public Bodies, effective 12/11/2018.