

OFFICE OF THE STATE AUDITOR



2.2.2 NMAC

Audit Rule

2016

**Requirements for Contracting and
Conducting Audits of Agencies**

Effective March 15, 2016

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TITLE 2 PUBLIC FINANCE

CHAPTER 2 AUDITS OF GOVERNMENTAL ENTITIES

PART 2 REQUIREMENTS FOR CONTRACTING AND CONDUCTING AUDITS OF AGENCIES

2.2.2.1 ISSUING AGENCY: Office of the State Auditor.

[2.2.2.1 NMAC - Rp, 2.2.2.1 NMAC, 3-15-16]

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

[2.2.2.2 NMAC - Rp, 2.2.2.2 NMAC, 3-15-16]

2.2.2.3 STATUTORY AUTHORITY: The Audit Act, Section 12-6-12 NMSA 1978, requires the state auditor to promulgate reasonable regulations necessary to carry out the duties of his office, including regulations required for conducting audits in accordance with auditing standards generally accepted in the United States of America. The regulations become effective upon filing in accordance with the State Rules Act, (Chapter 14, Article 4 NMSA 1978). The Audit Act, (Chapter 12, Article 6 NMSA 1978), requires the state auditor to conduct financial and compliance audits of every agency in accordance with governmental auditing, accounting and financial reporting standards, and local, state and federal laws, rules, and regulations. The audit act further establishes a tiered system of financial reporting for local public bodies in which the amount of a local public body's annual revenue determines whether the local public body is subject to an agreed upon procedures engagement. The Audit Act also gives the state auditor the authority to cause the financial affairs and transactions of an agency to be audited in whole or in part, in addition to the annual audit.

[2.2.2.3 NMAC - Rp, 2.2.2.3 NMAC, 3-15-16]

2.2.2.4 DURATION: Permanent.

[2.2.2.4 NMAC - Rp, 2.2.2.4 NMAC, 3-15-16]

2.2.2.5 EFFECTIVE DATE: March 15, 2016, unless a later date is cited at the end of a section.

[2.2.2.5 NMAC - Rp, 2.2.2.5 NMAC, NMAC, 3-15-16]

2.2.2.6 OBJECTIVE: The objective is to establish policies, procedures, rules and requirements for contracting and conducting financial audits, special audits, attestation engagements, performance audits, and forensic audits of governmental agencies of the state of New Mexico.

[2.2.2.6 NMAC - Rp, 2.2.2.6 NMAC, 3-15-16]

2.2.2.7 DEFINITIONS:

A. "Agency" means any department, institution, board, bureau, court, commission, district or committee of the government of the state, including district courts, magistrate or metropolitan courts, district attorneys and charitable institutions for which appropriations are made by the legislature; any political subdivision of the state, created under either general or special act, that receives or expends public money from whatever source derived, including counties, county institutions, boards, bureaus or commissions; municipalities; drainage, conservancy, irrigation, or other special districts; and school districts; any entity or instrumentality of the state specifically provided for by law, including the New Mexico finance authority, the New Mexico mortgage finance authority, the New Mexico lottery authority

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and every office or officer of any entity listed in Paragraphs (1) through (3) of Subsection A of Section 12-6-2 NMSA 1978.

- B. "Auditor" means independent public accountant.
- C. "AICPA" means American institute of certified public accountants.
- D. "AU-C" means U.S. auditing standards-AICPA (Clarified)
- E. "AUP" means agreed upon procedures.
- F. "CPA" means certified public accountant.
- G. "CPE" means continuing professional education.
- H. "DFA" means the New Mexico department of finance and administration.
- I. "ERB" means the New Mexico education retirement board.
- J. "FCD" means financial control division of the department of finance and administration.
- K. "FDIC" means federal deposit insurance corporation.
- L. "FDS" means financial data schedule.
- M. "GAAP" means accounting principles generally accepted in the United States of America.
- N. "GAGAS" means generally accepted government auditing standards.
- O. "GASB" means governmental accounting standards board
- P. "GAAS" means auditing standards generally accepted in the United States of America.
- Q. "GSD" means the New Mexico general services department.
- R. "GRT" means gross receipts tax.
- S. "HED" means the New Mexico higher education department.
- T. "HUD" means United States (US) department of housing and urban development.
- U. "IPA" means independent public accountant.
- V. "IRC" means internal revenue code.
- W. "LGD" means the local government division of Department of Finance and Administration (DFA).
- X. "Local public body" means a mutual domestic water consumers association, a land grant, an incorporated municipality or a special district.
- Y. "NCUSIF" means national credit union shares insurance fund.
- Z. "NMAC" means New Mexico administrative code.
- AA. "NMSA" means New Mexico statutes annotated.
- BB. "Office" or "OSA" means the New Mexico office of the state auditor.
- CC. "OMB" means the United States office of management and budget.
- DD. "PED" means the New Mexico public education department.
- EE. "PERA" means the New Mexico public employee retirement association.
- FF. "PHA" means public housing authority.
- GG. "REAC" means real estate assessment center.
- HH. "REC" means regional education cooperative.
- II. "RSI" means required supplemental information.
- JJ. "SAS" means the AICPA's statement on auditing standards.
- KK. "SHARE" means statewide human resources accounting and management reporting system.
- LL. "State auditor" may refer to either the elected state auditor of the state of New Mexico, or personnel of his office designated by him.
- MM. "STO" means state treasurer's office.
- NN. "Tier" is established based on the amount of each local public body's annual revenue, pursuant to Section 12-6-3 NMSA 1978 and 2.2.2.16 NMAC.
- OO. "UFRS" means uniform financial reporting standards.
- PP. "Uniform guidance for federal awards" 2CFR-200.0 et seq.
- QQ. "U.S. GAO" means the United States government accountability office.
[2.2.2.7 NMAC - Rp, 2.2.2.7 NMAC, 3-15-16

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2.2.2.8 THE PROCUREMENT AND AUDIT PROCESS:

A. Statutory authority: Section 12-6-3 NMSA 1978 (annual audits) mandates that:

(1) the financial affairs of every agency be thoroughly examined and audited each year by the state auditor, personnel of his office designated by him, or by independent auditors approved by him;

(2) the comprehensive annual financial report for the state be thoroughly examined and audited each year by the state auditor, personnel of his office designated by him or by independent auditors approved by him; and

(3) the audits be conducted in accordance with generally accepted auditing standards and rules issued by the state auditor.

B. 12-6-3 NMSA 1978: establishes a tiered system of financial reporting for local public bodies in which the amount of a local public body's annual revenue determines whether the local public body is subject to an agreed upon procedures engagement. See 2.2.2.16 NMAC for information applicable to local public bodies.

C. 12-6-3 NMSA 1978: states that 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. 2.2.2.15 NMAC provides regulations regarding this type of engagement. Section 12-6-14 NMSA 1978 (contract audits) states that "the state auditor shall notify each agency designated for audit by an independent auditor, and the agency shall enter into a contract with an independent auditor of its choice in accordance with procedures prescribed by rules of the state auditor; provided, however that a state-chartered charter school subject to oversight by the public education department or an agency subject to oversight by the higher education department shall receive approval from its oversight agency prior to submitting a recommendation for an independent auditor of its choice." The state auditor may select the auditor for an agency that has not submitted a recommendation within 60 days of notification by the state auditor to contract for the year being audited, and the agency being audited shall pay the cost of the audit. Each contract for auditing entered into between an agency and an independent auditor shall be approved in writing by the state auditor. 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. Subsection B of Section 61-28B-13 NMSA 1978 of the 1999 Public Accountancy Act states that a firm with an office in New Mexico must hold a permit issued pursuant to this section of the 1999 Public Accountancy Act (Section 61-28B-1 NMSA 1978) in order to provide attest services including audits of financial statements. A permit is also required for a firm that does not have an office in New Mexico but performs attest services for a client whose principal place of business is in New Mexico. Pursuant to Subsection A of 16.60.3.14 NMAC, a person whose principal place of business is not New Mexico and who has a valid certificate/license as a certified public accountant from another state shall be presumed to have qualifications substantially equivalent to New Mexico's requirements if the person meets the requirements of the Public Accountancy Act, Section 61-21B-26 NMSA 1978.

D. Firm profiles: Except as otherwise provided in 2.2.2.16 NMAC, for an IPA to be included on the state auditor's list of approved firms, an IPA shall submit a firm profile annually on January 5th or on the next business day, in accordance with the guidelines set forth herein. The office shall review each firm profile for compliance with the requirements set forth in Subsections B through G of 2.2.2.8 NMAC. Firms are required to notify the state auditor of changes to the firm profile as information becomes available. The state auditor shall approve contracts only with IPAs who have *submitted a complete and correct* firm profile that has been approved by the office, and who have complied with all the requirements of this rule, including but not limited to:

(1) 2.2.2.14 NMAC, continuing education and quality control requirements for all staff that the firm will use on any New Mexico governmental engagements;

(2) listed professional service contracts the firm entered into pursuant to Subsection N of 2.2.2.8 NMAC;

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(3) for IPAs who have audited agencies under this rule in the past, they must have previously complied with:

- (a) 2.2.2.9 NMAC, Report Due Dates;
- (b) 2.2.2.13 NMAC, Review of Audit Reports and Audit Documentation;

and

(c) Paragraph (5) of Subsection A of 2.2.2.9 NMAC, notifying the state auditor regarding why audit reports will be late.

E. List of approved firms: The state auditor shall maintain a list of independent public accounting (IPA) firms that are approved and eligible to compete for audit contracts and agreed upon procedures engagements with agencies. The state auditor's list of approved firms shall be reviewed and updated on an annual basis. An IPA on the list of approved firms is approved to perform government audits until the list of approved firms is published for the following year. The state auditor may approve contracts only with IPA firms that have submitted a complete and correct firm profile complying with all the requirements set forth in this rule and that has been approved by the office. The office shall inform all IPAs whose firm profiles were submitted by the deadline whether they are on the list of approved firms and shall publish the list of approved firms concurrent with notification to government agencies to begin the procurement process to obtain an IPA to conduct the agency's annual financial audit.

F. Conditional approval: An IPA firm may be added to the list of approved firms even though the firm has one or more of the deficiencies of its firm profile listed below, except that the office shall not approve any contracts for the deficient IPA until the office receives documentation demonstrating all deficiencies have been cured:

- (1) the firm profile does not include at least one CPA with a current CPA certificate;
- (2) the firm does not have at least one CPA that meets the 80 hour GAGAS CPE requirement of Subsection A of 2.2.2.14 NMAC;
- (3) the firm profile does not include a copy of the IPA's current proof of insurance;
- (4) the IPA employs only one CPA qualified to sign a GAGAS audit report and the firm has not submitted the completed original contingency subcontractor form required by Subsection M of 2.2.2.8 NMAC;
- (5) the IPA's peer review is scheduled to be completed on or before publication of the list of approved firms, but is missing from the firm profile; or
- (6) the firm profile does not include either the signed attestation form regarding CPE or the signed attestation form regarding the firm profile.

G. Disqualified firms: An IPA firm shall not be included on the list of approved firms if any of the following applies to that IPA:

- (1) the firm received a peer review rating of "failed";
- (2) the firm does not have a current New Mexico firm permit to practice;
- (3) the firm profile does not include at least one certified public accountant with a current CPA certificate who has met the GAGAS CPE requirements described at Subsection A of 2.2.2.14 NMAC, to perform GAGAS audits;
- (4) the IPA has been restricted in the past and has not demonstrated improvement (this includes submitting excessively deficient audit reports or having excessively deficient workpapers); or
- (5) any other reason determined by the state auditor to serve the interest of the state of New Mexico.

H. Restriction:

(1) IPAs may be placed on restriction based on the office's review of the firm profile and deficiency considerations as described below. Restriction may take the form of limiting either the type of engagement or the number of audit contracts, or both, that the IPA may hold. The office may impose a corrective action plan associated with the restriction. The restriction remains in place until the office notifies the IPA that the restriction has been modified or removed. The deficiency considerations include, but are not necessarily limited to:

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- (a) failure to submit reports in accordance with Paragraph (1) of Subsection A of 2.2.2.9 NMAC, or the terms of their individual agency contract(s) whichever applies;
- (b) failure to submit late report notification letters in accordance with Paragraph (5), Subsection A of 2.2.2.9 NMAC;
- (c) failure to comply with Subsections M and N of 2.2.2.8 NMAC;
- (d) poor quality reports as determined by the office;
- (e) poor quality working papers as determined by the office;
- (f) a peer review rating of “pass with deficiencies” with the deficiencies being related to governmental audits;
- (g) failure to contract through the office for New Mexico governmental audits or agreed upon procedures engagements;
- (h) lack of compliance with the procurement code;
- (i) failure to inform agency in prior years that the IPA is restricted;
- (j) failure to comply with the confidentiality requirements of 2.2.2.15 NMAC;
- (k) failure to invite the state auditor or his designee to engagement entrance conference, progress meetings or exit conferences after receipt of related notification from the office;
- (l) refusal to comply with office referrals or requests in a timely manner; or
- (m) any other reason determined by the state auditor to serve the interest of the state of New Mexico.

(2) The office shall notify IPAs 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 IPA recommendation letter to the office for an IPA that was ineligible to perform that contract due to its restriction, the office shall immediately reject the IPA recommendation in accordance with Subsection I of 2.2.2.8 NMAC.

I. Procedures for imposition of restrictions:

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

(a) The state auditor or his designee shall cause written notice of the restriction to be sent by certified mail, return receipt requested, to the IPA, which shall take effect as of the date of the letter of restriction.

- (i) the letter shall contain the following information;
- (ii) the office has placed a restriction on either the type of engagement or the number of audit contracts, or both, that the IPA is eligible to enter into;
- (iii) the conditions of the restriction;
- (iv) the reasons for the restriction;
- (v) the action to place the IPA on restriction is brought pursuant to Subsection A of Section 12-6-3 NMSA 1978 and these regulations;
- (vi) the IPA may request, in writing, reconsideration of the proposed contract restriction which must be received by the office within 15 calendar days from the day the IPA receives the letter of restriction; and
- (vii) 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 office’s letter of restriction. The IPA may request an opportunity to present in person its written request for reconsideration and provide

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supplemental argument as to why the office'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 office does not receive a written request for reconsideration within the 15 calendar days of the date of receipt of the letter of restriction. The state auditor may grant, for good cause shown, an extension of time within which the IPA has to submit a request for reconsideration.

(2) The office shall review an IPA's request for reconsideration and shall make a determination on reconsideration within 15 calendar days of receiving the request unless the IPA has asked to present its request for reconsideration in person, in which case the office shall make a determination within 15 calendar days from the date of the personal meeting. The office 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 certified mail, return receipt requested.

J. Procedures to obtain professional services from an IPA: Concurrent with publication of the list of approved firms, the office shall inform agencies that they are to select an IPA to perform their audit or agreed-upon procedures engagement. The notification shall inform the agency that it should consult its prospective IPA to determine whether the prospective IPA has been restricted by the office as to the type of engagement or number of contracts it is eligible to perform. Agencies that may be eligible for the tiered system shall complete the evaluation described in Subsection B of 2.2.2.16 NMAC. The agency shall proceed to procure professional services from an IPA. Agencies that receive and expend federal awards must follow the uniform guidance for federal awards procurements requirements from 2 CFR Sections 200.317 to 200.326 and Section 200.509, and should also incorporate applicable guidance from the following requirements. Agencies should comply with the following procedures to obtain professional services from an IPA for an audit or agreed-upon procedures engagement.

(1) Upon receipt of written notification from the office to proceed, the agency shall identify all elements or services to be solicited pursuant to Subsection A of 2.2.2.10 NMAC, or Subsections A and B of 2.2.2.16 NMAC if applicable, and request quotations or proposals for each applicable element of the annual financial audit or agreed upon procedures engagement.

(2) Agencies that qualify for agreed-upon procedures engagements pursuant to the tiered system are strongly encouraged to select an IPA on the office's list of approved firms that are approved to perform audits and agreed-upon procedures engagements. However, a local public body may select an IPA whom the office has approved for agreed-upon procedures engagements only.

(3) Quotations or proposals for annual financial audits should contain quotations or proposals for 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).

(4) The office considers IPA services that cost less than \$60,000 excluding gross receipts tax to be small purchases for purposes of the audit rule. The agency may procure and contract for audit services for one year only. The agency is encouraged to request a multiple year proposal for the audit services (not to exceed three years) in which the cost of audit service is \$60,000 or less in each year (excluding gross receipts taxes). The agency is encouraged to obtain no fewer than three written or oral quotations to be recorded and placed in the procurement file. Section 13-1-191.1 NMSA 1978, requires prospective contractors to complete a standard campaign contribution disclosure form and file it with the state agency or local public body as part of the competitive sealed proposal, or in the case of a sole source or small purchase contract, on the date on which the contractor signs the contract.

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(5) For IPA services that cost over \$60,000 excluding gross receipts tax for each year of the contract, the agency shall seek competitive sealed proposals and contract for audit services in accordance with the Procurement Code (Chapter 13, Article 1 NMSA 1978) or equivalent home rule procurement provisions; GSD Rule, 1.4.1 NMAC, Procurement Code Regulations, if applicable; and DFA Rule, 2.40.2 NMAC, Governing the Approval of Contracts for the Purchase of Professional Services. Section 13-1-191.1 NMSA 1978 requires prospective contractors to complete a standard campaign contribution disclosure form and submit it to the agency as part of the competitive sealed proposal. In addition, if the agency intends to allocate a portion of the audit cost to federal funds as direct or indirect charges, the agency should comply with applicable procurement requirements stated in the uniform guidance for federal awards.

(6) The agency may, and is strongly encouraged to, request a multiple year proposal to provide services not to exceed a term of three years. The term of the contract shall be one-year. The parties must enter a new audit contract each year. 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 solicit services.

(7) 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) should not be charged in addition to the cost of the engagement, as the office views this in the same manner as compliance with any other applicable standards.

(8) The agency shall evaluate all competitive sealed proposals or quotations received pursuant to this Subsection H of 2.2.2.8 NMAC using an evaluation process, preferably executed by a selection committee. Members of component units such as charter schools, housing authorities, etc., are encouraged to be included in the IPA selection process. As part of their evaluation process, agencies should consider the following criteria when selecting an IPA:

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

(d) the price criteria that the office recommends not be weighted more than fifteen percent of the total criteria taken into consideration by the evaluation process or selection committee; if the office requests to review the IPA scoring documentation, the agency must make accessible to the office, all copies of the IPA evaluation documentation described above.

(9) After completing the evaluations for each IPA and making the IPA selection, each agency must 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. This can be done prior to contract season to avoid overloading the system. The agency's user shall then use the "generate contract" function on 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 will generate a draft contract containing the required information already entered. The agency must submit to the office for approval a copy of the unsigned draft contract, by following the instructions on OSA-connect. Note that the IPA recommendation form no longer exists as a separate document, because OSA-connect will gather and deliver to the office the information historically submitted on the IPA recommendation form.

(10) The OSA will notify the agency as to the office's approval or rejection of the selected IPA and contract. Any notification of approval will be dependent on the agency using the correct form of contract. After the agency receives notification of approval of the selected IPA and contract from the office, the agency is responsible for getting the contract signed and sent to any oversight agencies, including DFA, for approval (if applicable). The office will not physically sign the contract. After the agency obtains all the required signature and approvals of the contract, the agency shall submit an

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electronic portable document format (PDF) copy of the final signed contract to the office by electronic mail to: *reports @osa.state.nm.us*.

(11) The agency shall deliver the unsigned contract generated by OSA-connect to the office by the deadlines shown below. In the event that the due date falls on a weekend or holiday, the due date will be the next business day. If the unsigned contract is not submitted to the state auditor by these deadlines, the IPA may, according to professional judgment, include a finding of non-compliance with Paragraph (9) of Subsection H of 2.2.2.8 NMAC in the audit report or agreed-upon procedures report.

- (a)** regional education cooperatives, cooperative educational services; independent housing authorities, hospitals and special hospital districts - April 15;
- (b)** school districts, counties, and higher education - May 1;
- (c)** local workforce investment boards and combined county/municipality governments (which only applies to Los Alamos), and local public bodies that do not qualify for the tiered system - May 15;
- (d)** councils of governments, district courts, district attorneys, state agencies and the state of New Mexico CAFR - June 1;
- (e)** local public bodies that qualify for the tiered system pursuant to Subsections A and B of 2.2.2.16 NMAC - July 1; and
- (f)** agencies with a fiscal year end other than June 30 must use a due date 30 days before the end of the fiscal year; and
- (g)** component units that are being separately audited - on the primary government's due date;
- (h)** charter schools that are chartered by the public education department (PED) and agencies that are subject to oversight by the higher education department (HED) have the additional requirement of submitting their audit contract to PED or HED for approval prior to submitting the unsigned contract to the state auditor for approval, Section 12-6-14 NMSA 1978;
- (i)** in the event the agency's unsigned contract is submitted to the office, but is not approved by the state auditor, the state auditor will promptly communicate the decision, including the reason(s) for disapproval, to the agency, at which time the agency shall promptly submit a different contract using OSA-connect; this process may 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 from the date of the disapproval and shall include documentation in support of its IPA selection; the state auditor may hold an informal meeting to discuss the request; the state auditor may set the meeting in a timely manner with consideration given to the agency's circumstances.

(12) If the agency fails to submit the unsigned contract within 60 days of notification from the state auditor to engage an IPA pursuant to Paragraph (5) of Subsection H of 2.2.2.8 NMAC, 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.

(13) In selecting an IPA for an agency pursuant to Paragraph (10) of Subsection H 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 state auditor's IPA selection shall be drawn from the list of approved IPAs maintained by the state auditor;
- (b)** an IPA subject to restriction pursuant to Subsection G 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;

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(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.

(14) The state auditor shall consider, at a minimum, the following factors when considering which agencies will be subject to the state auditor's selection of an IPA:

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

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

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

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

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

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

(15) 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 will be selected for each government agency subject to the discretion of the state auditor.

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

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

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

(c) pursuant to Section 12-6-14(A) 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;

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

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

K. State auditor approval/disapproval of IPA recommendation: The state auditor will use *discretion* and may not approve:

(1) An audit recommendation or agreed upon procedures professional services contract recommendation under 2.2.2.16 NMAC that does not serve the best interests of the public or the agency or local body because of one or more of the following reasons:

(a) lack of experience of the IPA;

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

(i) the IPA is prohibited from conducting the agency audit or agreed upon procedures engagement for a period of two years because the IPA already conducted those services for that agency for a period of six years; provided however, that any IPA that was previously allowed to contract with the same agency for 12 consecutive years, and has completed the first six years or more, and

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has completed the first or second year of a three-year multi-year proposal may continue to contract with that agency for the duration of that three-year multi-year proposal;

(ii) if firm A purchases the stock or assets of firm B, or if firm B merges into firm A with firm A being the surviving firm, firm A will not be affected for purposes of the auditor rotation requirement; the auditor rotation clock will continue to run without interruption for firm B's audit contracts, despite the fact that such audit contracts may be issued by firm A after the purchase or merger;

(iii) a firm may submit to the office for consideration a written request for an exemption from the rotation requirements above. The written request must document extraordinary circumstances that justify the exemption request.

(c) lack of competence or staff availability;
(d) circumstances that may cause untimely delivery of the audit report or agreed upon procedures 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 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; or

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

(2) Audit contracts or agreed-upon procedures contracts of an IPA that has:

(a) breached a prior-year contract;
(b) failed to deliver an audit or agreed upon procedures 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 or an agreed upon procedures 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 (see Subsection N of 2.2.2.8 NMAC);

(f) failed to respond, in a timely and acceptable manner, to an audit or agreed upon procedures 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) has not adhered to external quality control review standards as defined by GAGAS and Subsections A and B of 2.2.2.14 NMAC;

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

(k) released the audit report or agreed upon procedures report to the agency, local public body or the public before the audit release letter or the OSA letter releasing the agreed upon procedures report, described in Subsection G of 2.2.2.16 NMAC, was received from the office;

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

(m) failed to submit a completed firm profile as required by Subsection B 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 office or engagement clients within a reasonable amount of time; or

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

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

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

(1) be completed and submitted in its unsigned form by the deadline indicated above at Paragraph (9) of Subsection H of 2.2.2.8 NMAC;

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

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

(4) if applicable to the agency's audit contract or agreed-upon procedures engagement, the auditor shall perform additional procedures indicated in the "other provisions section" of the contract; if the additional procedures required by the "other provisions" section of the contract cause a significant change in the scope of the audit, then the contract amendment provisions of Subsection S of 2.2.2.8 NMAC will apply.

M. 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, or with the firm information if the IPA performs only engagements pursuant to 2.2.2.16 NMAC. The amount maintained should be commensurate with the risk assumed. The IPA must provide to the state auditor, prior to expiration, updated insurance information.

N. Breach of contract: A breach of any terms of the contract shall be grounds for immediate termination of the contract. The injured party may seek damages for such breach from the offending party. Any IPA who knowingly makes false statements, assurances, or disclosures may be disqualified from conducting audits or agreed upon procedures engagements of agencies or local public bodies in New Mexico.

O. Subcontractor requirements:

(1) Audit firms that have only one individual qualified to supervise a GAGAS audit and issue the related audit report pursuant to Section 61-28B-17 NMSA 1978, and GAGAS Paragraph 3.76 must submit with the firm profile, a completed original contingency subcontractor form that is dated to be effective until the date the next firm profile must be submitted. The form shall indicate which IPA on the state auditor's current list of approved IPA's will 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 office will not approve audit contracts for such a firm without the required original contingency subcontractor form.

(2) In the event an IPA chooses to use a subcontractor to assist the IPA in working on an audit, then the IPA must obtain the *prior written approval* of the state auditor to subcontract a portion of the audit work. The IPA may subcontract only with IPAs who have submitted a completed and approved firm profile to the state auditor as required in Subsection B of 2.2.2.8 NMAC. The audit contract shall specify subcontractor responsibility, who will sign the report(s), and how the subcontractor will be paid. See the related subcontractor form available at www.osanm.org.

P. IPA independence: The GAGAS 2011 revision was issued by the United States government accountability office (GAO). It became effective for financial audits and attestation

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engagements for periods ending on or after December 15, 2012 (FY13), and for performance audits that began on or after December 15, 2011. Pursuant to GAGAS 3.08, “auditors should apply the GAGAS conceptual framework at the audit organization, engagement, and individual auditor level to: identify threats to independence; evaluate the significance of the threats identified; both individually and in the aggregate; and apply safeguards as necessary to eliminate the threats or reduce them to an acceptable level.” Auditors should use GAGAS Paragraphs 3.33 and 3.58 in evaluating threats to independence related to non-audit services. Note that the old guidance on this subject, government auditing standards: Answers to independence standard questions (GAO-02-870G, July 2002), has been retired. Pursuant to GAGAS 3.40, “auditors should establish and document their understanding with the audited entity’s management or those charged with governance, the following: objectives of the non-audit services; services to be performed; audited entity’s acceptance of its responsibilities; the auditor’s responsibilities; and any limitations of the non-audit services.”

(1) An IPA who performs the agency’s annual financial audit shall not enter into any special audit or non-audit service contract with the respective agency without the prior written approval of the state auditor. The exception to this requirement is an engagement that costs \$1,000 and less (exclusive of gross receipts tax) for client assistance with responses to IRS and other regulators. Only one exception per agency will be allowed per fiscal year. Requests for approval of professional service contracts should be submitted to the office with the original version of the signed agreement by the fifth of each month. The office shall review the requests and respond to the agency and the IPA by the 25th of each month. The following documentation must be submitted to the office for review and approval.

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

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

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

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

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

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

(c) Upon completion of the non-audit services, the IPA must provide the state auditor with a copy of any report submitted to the agency. Such reports are not subject to the office review and release procedures unless 2.2.2.15 NMAC requires such review and release procedures.

(2) An IPA that is not the external auditor for the agency may not enter into any type of fraud-related engagement (this includes waste and abuse related engagements) with a New Mexico governmental entity without first obtaining the prior written approval of the state auditor. See 2.2.2.15 NMAC for the requirements to submit such reports to the office for review and release. If the proposed engagement is not subject to 2.2.2.15 NMAC, then prior written approval by the state auditor is not required when the IPA is not the agency’s external auditor. However, a copy of the contract that is unrelated to fraud and a copy of any report resulting from such a contract must be submitted to the office when requested by the office.

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(3) The state auditor will not approve any contract for:

(a) An agency's external auditor to perform the following non-audit services that are management responsibilities:

- (i) setting policies and strategic direction for the audited entity;
- (ii) directing and accepting responsibility for the actions of the audited entity's employees in the performance of their routine, recurring activities;
- (iii) having custody of an audited entity's assets;
- (iv) reporting to those charged with governance on behalf of management;
- (v) deciding which of the auditor's or outside third party's recommendations to implement;
- (vi) accepting responsibility for the management of an audited entity's project;
- (vii) accepting responsibility for designing, implementing, or maintaining internal control;
- (viii) providing services that are intended to be used as management's primary basis for making decisions that are significant to the subject matter of the audit;
- (ix) developing an audited entity's performance measurement system when that system is material or significant to the subject matter of the audit; and
- (x) serving as a voting member of an audited entity's management committee or board of directors (GAGAS 3.36).

(b) The following non-audit services, pursuant to GAGAS 3.50, always impair the auditor's independence:

- (i) determining or changing journal entries, account codes or classifications for transactions, or other accounting records for the entity without obtaining management's approval;
- (ii) authorizing or approving the entity's transactions;
- (iii) preparing or making changes to source documents without management approval; source documents include those providing evidence that transactions have occurred (for example, purchase orders, payroll time records, customer orders, and contracts); such records also include an audited entity's general ledger and subsidiary records or equivalent.

(c) The following non-audit services, pursuant to GAGAS 3.53 and 3.54, always impair the auditor's independence:

- (i) setting internal audit policies or the strategic direction of internal audit activities;
- (ii) performing procedures that form part of the internal control, such as reviewing and approving changes to employee data access privileges; and
- (iii) determining the scope of the internal audit function and resulting work; and performing or supervising ongoing internal control monitoring procedures.

(d) The following non-audit services, pursuant to GAGAS 3.56, always impair the auditor's independence:

- (i) designing or developing a financial or other information technology (IT) system that will play a significant role in the management of an area of operations that is or will be the subject matter of an audit;
- (ii) providing services that entail making other than insignificant modifications to the source code underlying such a system; and
- (iii) operating or supervising the operations of such a system.

(e) Pursuant to GAGAS 3.47, "valuation services that would have a material effect, separately or in the aggregate, on the financial statements or other information on which the audit firm is reporting, and the valuation involves a significant degree of subjectivity would impair the auditor's independence."

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(f) The auditor's independence would also be impaired by the performance of any of the non-audit services listed at GAGAS 3.58 regarding the entity's non tax disbursements, benefit plan administration, investment advisory or management services, listed prohibited consulting or advisory services, executive or employee personnel matters, and business risk consulting.

Q. Progress Payments: The state auditor will 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(B) NMSA 1978 (contract audits) provides that the state auditor may authorize progress payments on the basis of evidence of the percentage of audit work completed as of the date of the request for partial payment.

(3) Progress payments up to seventy percent do not require state auditor approval provided that the agency certifies the receipt of services before any payments are made to the IPA. The agency must 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 shall provide a copy of the approved progress billing(s). Progress payments of seventy percent to ninety percent require state auditor approval after being approved by the agency. When component unit audits are part of a primary government's audit contract, requests for progress payments on the component unit audit(s) should be included within the primary government's request for progress payment approval. In this situation, the office will not process separate progress payment approvals submitted by the component unit.

(4) The state auditor may allow only the first fifty percent of progress payments 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.

(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 stated, in writing, that the audit has been made in a competent manner in accordance with contract provisions and this rule. The state auditor's determination with respect to final payment shall be stated in the letter accompanying the release of the report to the agency. 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 must 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 list of approved auditors.

R. 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 must provide to the agency the adjusting journal entries and the supporting documentation that reconciles the financial statements in the audit report to the books.

(4) If the IPA prepared the financial statements for management's review and approval, in conformance with Subsection M of 2.2.2.8 NMAC, including documenting the safeguards as required by GAGAS 3.59, the fact that the auditor prepared the financial statements must be disclosed in the exit conference page of the audit report. If the IPA prepared the financial statements, the auditor must determine whether an AU-C 265.09 and .10 related audit finding should be reported.

(5) If the agency is a component of a primary government, the agency's procurement for audit services must 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

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requirement applies to agencies and universities that are part of the statewide CAFR, other component units of the statewide CAFR and other component units of any primary government that use a different audit firm from the primary government's audit firm.

S. Audit documentation requirements:

(1) The IPA's audit documentation must be retained for a minimum of five years from the date shown on the opinion letter of the audit report or longer if requested by the federal oversight agency, cognizant agency, or the state auditor. The state auditor shall have access to the audit documentation at the discretion of the state auditor.

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

(3) The audit documentation of a predecessor IPA must 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 will 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 and require that the IPA give precedence to outstanding multiple year proposals; or

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

T. Auditor communication requirements:

(1) The AICPA requirements for auditor communication with those charged with governance are set forth in AU-C 260, effective for periods ending on or after December 15, 2012 (FY13). The 2011 version of GAGAS has the following additional requirements at GAGAS 4.03 and 4.04:

(a) Auditors should communicate pertinent information that in the auditors' professional judgment needs to be communicated to individuals contracting for or requesting the audit, and to cognizant legislative committees when auditors perform the audit pursuant to a law or regulation, or they conduct the work for the legislative committee that has oversight of the audited entity."

(b) "In those situations where there is not a single individual or group that both oversees the strategic direction of the audited entity and the fulfillment of its accountability obligations or in other situations where the identity of those charged with governance is not clearly evident, auditors should document the process followed and conclusions reached for identifying the appropriate individuals to receive the required auditor communications."

(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 photocopy of the signed letter as part of the audit documentation. In addition to meeting the requirements of the AICPA guidance and the GAGAS requirements, the engagement letter should state that the engagement will be performed in accordance with 2.2.2 NMAC.

(3) 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.

(4) The IPA shall conduct an audit entrance conference with the agency. The office has the authority to notify the agency or IPA that the state auditor should be informed of the date of the

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entrance conference, any progress meetings and the exit conference. If such notification is received, the IPA and agency must invite the state auditor or his designee to attend all such conferences no later than 72 hours before the proposed conference or meeting.

(5) All communications with management and the agency oversight officials during the audit, regarding any instances of non-compliance or internal control weaknesses, must be communicated in writing. The auditor should obtain responsible officials' views responding to the audit findings, pursuant to GAGAS 4.33. Any violation of law or good accounting practice including instances of non-compliance or internal control weaknesses must be reported as an audit finding per Section 12-6-5 NMSA 1978. Separate management letter comments shall not be issued as a substitute for such findings.

U. Contract amendments requirements:

(1) Contract amendments to contracts for audit services, agreed upon procedures services, or non-audit services may be submitted to the office regarding executed contracts. Contract amendments submitted on an expired contract will be rejected. Any amendments to contracts should be made on the contract amendment form available at www.saonm.org. The form no longer includes a place for the office signature because the office no longer signs the contracts. The office will communicate its approval or disapproval of a proposed contract amendment in a letter to the IPA and agency. The contract should be amended prior to the additional work being performed or as soon as practicable thereafter. Any amendments to the contract must be in compliance with the New Mexico Procurement Code, Sections 13-1-1 to 13-1-199 NMSA 1978. Notwithstanding the delivery dates of the contract, audit report regulatory due dates are not subject to amendment.

(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;
- (b) how the work to be performed is beyond the scope of work outlined in the original contract; and
- (c) when the auditor or agency became aware the work needed to be performed.

(3) Since annual financial audit contracts are fixed-price contracts, contract amendments for fee increases will only be approved for extraordinary circumstances 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 will 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 special procedures required by a regulatory body or a local, state or federal grantor. Contract amendments will not be approved to perform additional procedures to achieve an unqualified opinion. The state auditor shall also consider the auditor independence requirements of Subsection N of 2.2.2.8 NMAC when reviewing contract amendments for approval. Requests for contract amendments should be submitted to the office with the original version of the signed contract amendment by the fifth of each month. The request for contract amendment should include a description of the work to be performed and the estimated hours required to perform the additional work. The office will review the requests and respond to the agency and the IPA by the 25th of each month. Requests for contract amendments submitted after the fifth of each month will not be reviewed and responded to by the office until the 25th of the following month.

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

(5) 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 Paragraph (3) of Subsection S of 2.2.2.8 NMAC may amend the amount of compensation for the audit services set forth in the contract.

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V. 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 office (consistent with the October 6, 1993, stipulated order *Vigil v. King*, No. SF 92-1487(C)). The notice of termination of the contract will be in writing.

(2) If the agency or IPA terminate the audit or agreed upon procedures engagement contract pursuant to the termination paragraph of the contract, the office should be notified of the termination immediately. The party sending out the termination notification letter must simultaneously send a copy of the termination notification letter to the office with an appropriate cover letter, addressed to the state auditor.

(a) The agency should follow the Procurement Code and Subsection H of 2.2.2.8 NMAC, Subsection A of 2.2.2.15 NMAC or Subsection D of 2.2.2.16 NMAC, to obtain the services of a different IPA.

(b) The IPA recommendation and completed contract for the newly procured IPA should be submitted to the office within 30 calendar days of the date of the termination notification letter.

(c) As indicated in Paragraph (3) of Subsection A of 2.2.2.9 NMAC, the state auditor will grant no extensions of time to the established regulatory due dates.

(d) If the agency does not expect to deliver the engagement report by the regulatory due date, the agency must submit a written notification letter to the state auditor and oversight agency as required by Paragraph (5) of Subsection A of 2.2.2.9 NMAC and Paragraph (2) of Subsection H of 2.2.2.16 NMAC.

[2.2.2.8 NMAC - Rp, 2.2.2.8 NMAC 3-15-16]

2.2.2.9 REPORT DUE DATES:

A. **Report due dates:** The auditor shall deliver the organized and bound annual financial audit report to the state auditor by 5:00 p.m. on the date specified in the audit contract or send it postmarked by the due date.

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

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

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

(c) counties: November 1;

(d) school districts and higher education: November 15;

(e) district courts, district attorneys, and county/municipality governments (of which Los Alamos is the only one): December 1;

(f) pursuant to Section 12-6-3 NMSA 1978, state agency reports are due no later than 60 days after the state auditor receives notice from the financial control division of the department of finance and administration (DFA-FCD) that the agency's books and records are ready and available for audit, see Paragraph (1) of Subsection A of 2.2.2.12 NMAC for additional details regarding due dates for state agencies; *state agency reports are due no later than December 1 after the close of the fiscal year;*

(g) workforce investment boards, councils of governments and local public bodies including municipalities (see also Subsection H of 2.2.2.16 NMAC): December 15;

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

(i) 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 dates requires the report to be submitted earlier; and

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(j) the state of New Mexico comprehensive annual financial report (CAFR) is due February 15.

(k) the education retirement board (ERB) and public employee retirement association (PERA) schedules of employer allocations and pension amounts reports required by Subsection X of 2.2.2.10 are due June 15.

(2) If an audit report is not delivered on time to the state auditor, the auditor must 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 should also be reported as a significant deficiency, or material weakness in the operation of internal control in the agency's internal controls over financial reporting pursuant to auditing standards 09 and 10 265 AU-C.

(3) An organized bound hard copy of the report should be submitted for review by the office 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). The report review guide should reference applicable page numbers in the audit report and be signed by the person completing the review guide. The audit manager or person responsible for the firm's quality control system should either complete the report review guide or sign off as having reviewed it. A report will not be considered submitted to the office for the purpose of meeting the deadline until a copy of the signed management representation letter, and the completed report review guide are also submitted to the office. All separate reports prepared for component units should also be submitted to the office 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 will not be considered submitted to the office for the purpose of meeting the deadline until a copy of the signed management representation letter and the completed report review guide are also submitted to the office. If a due date falls on a weekend or holiday, or if the office is closed due to inclement weather, the audit report is due the following workday by 5:00 p.m. If the report is mailed to the state auditor, it should 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 workday. The state auditor will grant no extensions of time to the established regulatory due dates.

(4) Auditing standards 700.41 AU-C 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. Auditing standards 580.20 AU-C 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 shown in Subsection A of 2.2.2 NMAC above, the auditor shall notify the state auditor and oversight agency of the situation in writing. This notification shall consist of a letter, not an email. However, a scanned version of the official letter sent via email is acceptable. There must be a separate notification for each late audit report. The notification must 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 should send a revised notification letter. In the event the contract was signed after the report due date, the notification letter must still be submitted to the office explaining the reason the audit report will be submitted after the report due date. A copy of the letter must be sent to the legislative finance committee and the applicable oversight agency: Public education department, DFA's FCD, DFA's local government division, or the higher education department. The late report notification letter is not required if the report was submitted to the office for review by the deadline, and then rejected by the office, making the report late when resubmitted. At the time the audit report is due, if circumstances still exist that will make the report late, the IPA or agency may consult the state auditor regarding the opinion to be rendered, but such a discussion should occur no later than the date the audit report is due. It is not the responsibility of the auditor to go beyond the scope of auditing standards generally accepted in the United States of America, or the audit report due date, to

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assure an unmodified opinion. Therefore, reports resubmitted to the office with changes of the IPA's opinion after the report deadline will be considered late and a late audit finding must be included in the audit report.

B. Delivery and release of the audit report:

(1) All audit reports (and all separate reports of component units if applicable) must be organized, bound and paginated. The office does not accept facsimile or e-mailed versions of the audit reports for initial review. The IPA shall deliver to the state auditor a hard copy of the audit report for review by 5:00 p.m. on the day the report is due. Reports postmarked by the due date will be considered received by the due date. Unfinished or excessively deficient reports will not satisfy this requirement; such reports will be rejected and returned to the IPA and the office may take action in accordance with Subsection C of 2.2.2.13 NMAC. When the office rejects and returns a substandard audit report to the IPA, the office will consider the audit report late if the corrected report is not resubmitted by the due date. The IPA will also be required to report a finding for the late audit report in the audit report. The firm should submit an electronic version of the corrected rejected report for office review. The name of the electronic file should be "corrected rejected report" followed by the agency name and fiscal year.

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

(3) IPAs are encouraged to deliver completed audit reports before the due date to facilitate the review process performed by the office. The office 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 2.2.2.13 NMAC, and any significant deficiencies have been corrected by the IPA, the office will indicate to the IPA that the report is ready to print. After the office review of the final version of the audit report pursuant to 2.2.2.13 NMAC, the office will authorize the IPA to submit the following items to the office within five business days; the required number of hardcopies specified in the audit contract; and an electronic searchable version of the audit report labeled "final," in PDF format, an electronic excel version of the summary of findings report, and an electronic excel version of the vendor schedule and an electronic excel version of the completed fund balance form (all available at www.saonm.org). The office will not release the report until the searchable electronic version of the report and the electronic excel versions of the summary of findings report, the vendor schedule and the fund balance form that meet the following criteria are received by the office. The electronic file containing the final audit report must:

- (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 megabyte (MB) per file submitted (contact the office to request an exception if necessary);
- (d) have all security settings like self-sign security, user passwords, or permissions removed or deactivated so the office 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 will be deleted by the office);
- (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);

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(j) be saved at 300 dots per inch (DPI) (lower DPI will make the file hard to read and higher DPI will make the file too large);

(k) the electronic file name must start with “final version,” followed by the name of the agency and the fiscal year, and then end with .pdf; and

(l) the electronic file must 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” unless the agency submitted a letter to the office requesting to waive the five day waiting period. Release of the audit report to the agency or the public prior to it being officially released by the state auditor will result in an audit finding. The agency or the IPA shall ensure that every member of the agency’s governing authority receives a copy of the audit report.

(5) After the release of a report, the office will provide DFA and the legislative finance committee with notification that the report is available on the office website.

(6) If an audit report is reissued pursuant to auditing standards Section 560 AU-C, subsequent events and subsequently discovered facts, and AAG-GAS 23.29 and 23.30 for single audits, the reissued audit report must be submitted to the office with a cover letter addressed to the state auditor. The cover letter must 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 office

will subject the reissued report to the report review process and upon completion of that report review process, will issue a “release letter;” the contents of the reissued audit report are subject to the same confidentiality requirements described in Paragraph (3) of Subsection J 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 office will notify the appropriate oversight agencies regarding the updated report on the office website.

(7) If changes to a released audit report are submitted to the office, 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, that 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 office will notify the appropriate oversight agencies regarding the updated report on the office website.

C. Required status reports: For an agency that has failed to submit audit or agreed-upon procedures reports as required by this rule, the state auditor may require the agency to submit a status report to the office in accordance with deadlines specified by the state auditor. 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. At a minimum, the report shall include:

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

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

(3) a description of 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.
[2.2.2.9 NMAC - Rp, 2 2.2.9 NMAC, 3-15-16]

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2.2.2.10 GENERAL CRITERIA:

A. Scope of annual financial audit:

(1) The financial audit shall cover the entire financial reporting entity including the primary government and any component units of the primary government.

(a) Entities must be reported as component units within the financial statements of the primary government, if the primary government is financially accountable for the entity (GASBS 14 Paragraph 10) or if the nature and significance of the entity to the primary government warrants inclusion (GASBS 39 Paragraphs 5 and 6). The primary government, in conjunction with its auditors, must 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 (as amended) and 39. The flowchart at GASBS 61 Paragraph 68 is useful for this determination. All agencies that meet the criteria of GASBS 14 (as amended) or 39 to be a component unit of the primary government must be included with the audited financial statements of the primary government by discrete presentation unless otherwise approved by the state auditor. Exceptions may occur when an agency requires presentation other than discrete. An exemption must be requested by the agency, in writing, from the state auditor in order to present a component unit as other than a discrete component unit. The request for an exemption must include a detailed explanation, conclusion and supporting documentation justifying the request for blended component unit presentation. The approval of the state auditor for the exemption is required prior to issuing the report. Per Paragraph 1.01 of AAG-SLV, not-for-profit component units should be reported using the government financial reporting format if they have one or more of the following characteristics: popular election of officers or appointment (or approval) of a controlling majority of the members of the organization's governing body by officials of one or more state or local governments; the potential for unilateral dissolution by a government with the net assets reverting to the government; or the power to enact and enforce a tax levy. If a not-for-profit does not qualify to be reported using the governmental format under the above criteria, that fact should be explained in the notes to the financial statements (summary of significant accounting policies financial reporting entity).

(b) If a primary government has no component units, that fact should 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 statement due to materiality, that fact must also be disclosed in the notes. However, if the primary government is a state agency, department or board, or public institution of higher education or public post-secondary educational institution, county, municipality or public school district, Section 6-5A-1 NMSA 1978 requires all 501(c) 3 component unit organizations with a gross annual income in excess of two hundred fifty thousand dollars (\$250,000) to receive an audit. Such component units cannot be excluded from the audit based on the "materiality" criterion.

(c) The state auditor requires the component unit(s) to be audited by the same audit firm that audits the primary government (except for public housing authority component units that are statutorily exempt from this requirement and the statewide CAFR). Requests for exemption from this requirement must 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 must be met:

(i) the group engagement partner should 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 (auditing standards 600.15 AU-C);

(ii) the component unit auditor selected must appear on the office of the state auditor list of eligible independent public accountants;

(iii) the bid and auditor selection processes must comply with the requirements of this rule;

(iv) the office of the state auditor standard contract form must be used;

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(v) the primary government, the primary engagement partner, management of the component unit, and the component auditor should all coordinate their efforts to ensure that the audit reports of the component unit and the primary government are submitted by the applicable deadlines;

(vi) all component unit findings must be disclosed in the primary government's audit report (except the statewide CAFR is required to include only separate legal component unit findings that are significant to the state as a whole); and

(vii) any separately issued component unit audit report must be submitted to the state auditor for the review process described in 2.2.2.13 NMAC.

(d) The level of planning materiality required by the state auditor for component units is at the individual fund level. This requirement does not apply to the audit of the statewide CAFR. College and university component units have a different materiality level. See Paragraph (3) of Subsection E of 2.2.2.12 NMAC.

(e) With the exception of the statewide CAFR, the following supplemental information (SI) pertaining to component units should be audited at the more detailed fund level included in the scope of the audit and opined on as illustrated in example A-14 (AAG-SLV Appendix A at 15.103): Component unit fund financial statements, and the combining and individual fund financial statements if separately issued financial statements of the component units are not available (AAG-SLV 3.22); and individual fund budgetary comparisons when a legally adopted budget exists for a fund if separately issued financial statements are not available. The office interprets a "legally adopted budget" to exist any time the agency prepares a budget and in every case where an entity receives federal funds, state funds, or any other "appropriated" funds.

(2) Audits of state and local governmental agencies shall be comprised of a financial and compliance audit of the financial statements and schedules as follows:

(a) The level of planning materiality required by the state auditor is at the individual fund level. The state auditor requires that the budgetary comparison statements be audited and included as part of the basic financial statements consistent with GASBS 34 footnote 53 and AAG-SLV 11.13. The level of planning materiality described in the AICPA audit and accounting guide, state and local governments, paragraphs 4.72 to 4.73, should be used for the statewide CAFR audit.

(b) The scope of the audit includes the following statements and disclosures which the auditor is required to audit and give an opinion on, the basic financial statements consisting of:

(i) the government-wide financial statements;

(ii) fund financial statements;

(iii) budgetary comparison statements (for only the general fund and major special revenue funds when the budget information is available on the same fund structure basis as the GAAP fund structure); and

(iv) notes to the financial statements.

(c) The auditor must audit the following required supplemental information, if applicable, and include it in the auditor's opinion (AAG-SLV 15.62 and 15.65). Budgetary comparisons for the general fund and major special revenue fund data 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 (GASB statement No. 41, budgetary comparison schedules-perspective differences an amendment of GASB statement No. 34).

(d) With the exception of the statewide CAFR, the auditor must audit the following supplemental information at the individual fund level, if applicable, and opine on it in the auditor's opinion following example A-14 (AAG-SLV Appendix A at 15.103):

(i) component unit fund financial statements, and the combining and individual fund financial statements (if there are no separately issued financial statements on the component unit per AAG-SLV 3.22);

(ii) combining and individual fund financial statements; and

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(iii) individual fund budgetary comparison statements for the remaining funds that have a legally adopted budget including any major capital project or debt service funds, non-major governmental funds, enterprise funds and internal service funds.

(e) 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 for postemployment benefit plans other than pension plans;

(iv) RSI schedules required by GASBS 45 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 Paragraphs 132 and 133).

(f) The audit engagement and audit contract compensation include an AU-C 725 opinion on the remaining supplemental information schedules presented in the audit report.

(i) some examples of remaining SI schedules are; the schedule of expenditures of federal awards required by OMB Circular A-133; the schedule of pledged collateral required by Paragraph (3) of Subsection N of 2.2.2.10 NMAC; the schedule of changes in assets and liabilities for agency funds required by Subsection Z of 2.2.2.10 NMAC; the school district schedule of cash reconciliation required by Subparagraph (e) of Paragraph (4) of Subsection C of 2.2.2.12 NMAC.

(ii) the auditor shall subject the information on the remaining SI schedules to the procedures required by AU-C 725;

(iii) 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 Subparagraph (b) of Paragraph (4) of Subsection C of 2.2.2.12 NMAC;

(iv) the auditor shall report on the remaining supplementary information (SI) in an explanatory paragraph following the opinion paragraph in the auditor's report on the financial statements pursuant to AU-C 725; see also the independent auditors report example on the office website at www.saonm.org.

(g) The audit engagement and audit contract compensation include AU-C 720 procedures and auditor reporting be performed on a *schedule of vendor information*. The agency shall prepare a schedule of vendors using the form and instructions available on www.saonm.org, for *procurements* exceeding \$60,000 (excluding gross receipts tax) that occurred during the audited fiscal year, that includes the following information: request for bid or request for proposal number; type of procurement, request for proposal (RFP), sole source, etc.; vendor that received the award; dollar amount of the awarded contract; dollar amount of any contract amendment during the fiscal year that caused a previously awarded contract to exceed \$60,000; the names and physical addresses of all vendors that responded to requests for bids or requests for proposals during the fiscal year; whether the vendor was an in-state vendor or an out-of-state vendor (based on the statutory definition); if the vendor was in-state and chose the veterans' preference instead of the in-state preference (this is n/a for federal funds); and a short description of the scope of work. The schedule should include the following for contracts totaling over \$60,000 (excluding gross receipts tax) regardless of whether related expenditures exceeded \$60,000 during the fiscal year: competitive procurements; sole-source procurements; and emergency procurements. The schedule should not include information on a multi-year procurement that occurred in a prior year unless there was a contract amendment during the current fiscal year that caused the previously existing contract to exceed \$60,000 for the first time. The schedule should not include procurements that agencies performed based on statewide pricing agreements obtained by general services department (GSD) or cooperative educational services. However, agencies like GSD and cooperative educational services that perform procurement services for other agencies that result in price

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agreements must disclose all their procurements in their vendor schedules in their own audit reports, including procurements that resulted in price agreements.

B. Reverting or non-reverting funds: Legislation can designate a fund as reverting or non-reverting. The IPA must review the state law that appropriated funds to the agency to confirm whether any unexpended, unencumbered balance of a specific appropriation must be reverted and to whom. The law will also indicate the deadline for the required reversion. Appropriate audit procedures must be performed to determine 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 should fully disclose the reverting or non-reverting status of a fund or appropriation. The financial statements must 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 must 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 DFA white papers “calculating reversions to the state general fund,” and “basis of accounting-modified accrual and the budgetary basis.” The statewide CAFR is exempt from this requirement.

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

- (1) (GAGAS) issued by the U.S. general accounting office, the 2011 revision;
- (2) U.S. auditing standards--AICPA (clarified) effective for periods ending on or after December 15, 2012;
- (3) uniform administrative requirements, cost principles, and audit requirements for federal awards (uniform administrative requirements) (applicable for FY16 audits);
- (4) AICPA audit 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.

D. 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. Auditors shall follow interpretations, technical bulletins, 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 office requires that the statement of revenues, expenditures, and changes in fund balances governmental funds include intergovernmental revenue from federal sources and intergovernmental revenue from state sources, as applicable.

E. [RESERVED]

F. State auditor workpaper requirement: The state auditor requires that audit workpapers include a written audit program for fund balances and net position that include tests for proper classification of fund balances pursuant to GASBS 54 and proper classification of net position as restricted or unrestricted pursuant to GASBS 34.34 to 34.37 (as amended) and GASBS 46.4 and 46.5 (as amended).

G. State compliance audit requirements: An IPA shall identify significant state statutes, rules and regulations applicable to the governmental agency under audit and perform tests of compliance. In addition to the significant state statutes, rules and regulations identified by the IPA, the following state statutes and constitutional provisions must be tested (with the exception of the statewide CAFR audit):

- (1) Procurement code Sections 13-1-1 to 13-1-199 NMSA 1978 including providing the state purchasing agent with the name of the agency’s or local public body’s chief procurement officer,

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pursuant to Section 13-1-95.2 NMSA 1978, and state purchasing regulations 1.4.1 NMAC, or home rule equivalent.

- (2) Per Diem and Mileage Act Sections 10-8-1 to 10-8-8 NMSA 1978, regulations governing the per diem and Mileage Act, and 2.42.2.11 NMAC, mileage-private conveyance, effective June 19, 2009.
- (3) Public Money Sections 6-10-1 to 6-10-63 NMSA 1978 including the requirements of Subsection A and B of Section 6-10-10 NMSA 1978 that county and municipal treasurers deposit money in their respective counties, and the requirement of Section 6-10-17 NMSA 1978 that the agency receive a joint safe keeping receipt for pledged collateral.
- (4) Public School Finance Act (Sections 22-8-1 to 22-8-48 NMSA 1978).
- (5) Investment of Public Money (Sections 6-8-1 to 6-8-21 NMSA 1978).
- (6) For Public Employees Retirement Act (Sections 10-11-1 to 10-11-141 NMSA 1978) auditors should test to ensure one hundred percent of payroll is reported to PERA. PERA membership is mandatory under the PERA Act, unless membership is specifically excluded pursuant to Section 10-11-3(B) NMSA 1978.
- (7) Educational Retirement Act (Sections 22-11-1 to 22-11-55 NMSA 1978).
- (8) Sale of public property (Sections 13-6-1 to 13-6-8 NMSA 1978).
- (9) Anti-donation clause (NM constitution article IX, Section 14).
- (10) Special, deficiency, and specific 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 budget compliance with Section 6-6-2 and Section 6-6-5 to Section 6-6-7 NMSA 1978.
- (12) Lease purchase agreements (New Mexico Constitution Article IX, Section 8 and 11; Sections 6-6-11 to 6-6-12 NMSA 1978; *Montano v. Gabaldon*, 108 NM 94, 766 P.2d 1328, 1989).
- (13) 2.20.1.1 to 2.20.1.18 NMAC, accounting and control of fixed assets of state government (updated for GASBS 34 as applicable).
- (14) 2.2.2 NMAC, requirements for contracting and conducting audits of agencies.
- (15) Article IX of the state constitution limits on indebtedness.
- (16) For agencies receiving general fund appropriations, Laws of 2014 regular session, Chapter 63, Section 3, Subsection J states, "except for gasoline credit cards used solely for operation of official vehicles, telephone credit cards used solely for official business and procurement cards used as authorized by Section 6-5-9 NMSA 1978, none of the appropriations contained in the General Appropriation Act of 2014 may be expended for payment of agency-issued credit card invoices".
- (17) For Retiree Health Care Authority Act (Section 10-7C-1 to 10-7C-19 NMSA 1978) auditors should test to ensure one hundred percent of payroll is reported to NMRHCA. RHCA employer and employee contributions are set forth in Section 10-7C-15 NMSA 1978.
- (18) Governmental Conduct Act (Sections 10-16-1 to 10-16-18 NMSA 1978).
- (19) School Personnel Act (Sections 22-10A-1 to 22-10A-39 NMSA 1978) and.
- (20) Whether the district has submitted the school-district-level reports required by the School Athletics Equity Act (Sections 22-31-1 to 22-31-6 NMSA 1978), although no auditing of the reports or the data therein is required.

H. Federal requirements the following federal compliance audit requirements must be tested (with the exception of the statewide CAFR audit):

- (1) The following government pronouncements establish requirements and give guidance for "yellow book" and single audits:
 - (a) generally accepted government auditing standards (GAGAS) issued by the U.S. government accountability office, latest effective edition;
 - (b) uniform administrative requirements, cost principles, and audit requirements for federal awards;
 - (c) the compliance supplement, latest edition; and
 - (d) OMB catalog of federal domestic assistance (CFDA), latest edition.

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(2) Internal revenue service (IRS) employee income tax compliance issues non-compliance with these IRS requirements requires a current year audit finding.

(a) Employee fringe benefits are presumed by the IRS to be income to the employee unless they are specifically excluded from income by the tax code. Any employee fringe benefits not excluded from income by the tax code must be reported on the employee's W-2. Examples of such fringe benefits could be: meal allowances paid to employees for meals away from home when overnight travel is not involved; discounted housing like school district teacherages, dues for membership in clubs organized for business, pleasure, recreation, or other social purpose (except rotary & kiwanis club); cash and non-cash awards, and employee insurance benefits for dependents who do not meet the IRS definition of a "dependent." Personal use of a government agency vehicle is always taxable income to the employee unless the vehicle is a qualified non-personal use vehicle provided to the employee as a "working condition fringe benefit," under applicable IRS guidance.

(i) examples of qualified non-personal use vehicles are: clearly marked police and fire vehicles; unmarked law enforcement vehicles (officer must be authorized to carry a firearm and have arrest authority); ambulance or hearse; vehicle with gross weight over 14,000 lbs.; 20 passenger bus and school bus; tractor and other farm equipment; and delivery truck with driver seating only;

(ii) the value of commuting and other personal use of a "nonqualified vehicle" must be included on the employee's W-2; there are three rules the IRS allows to be used for valuing personal use of an employer's vehicle; automobile lease valuation rule; cents-per-mile rule; and the commuting rule (three dollars (\$3.00) per day); for more detailed information regarding valuation of personal use of vehicles see IRS Pub. 15-B.

(b) For more information regarding these and other IRS issues please contact the federal state and local government specialist with the IRS, in Albuquerque, NM at 505-837-5610.

I. Audit finding requirements:

(1) Communicating findings: Pursuant to GAGAS 4.23, "auditors should communicate in the report on internal control over financial reporting and compliance, based upon the work performed: significant deficiencies and material weaknesses in internal control; instances of fraud and non-compliance with provisions of laws or regulations that have a material effect on the audit and any other instances that warrant the attention of those charged with governance; non-compliance with provisions of contracts or grant agreements that has a material effect on the audit; and abuse that has a material effect on the audit."

(a) AU-C 260.09 requires the auditor to evaluate deficiencies to determine whether individually or in combination they are significant deficiencies or material weaknesses. Guidance for evaluating deficiencies is available at AU-C 260.A5 through 269.A11. Examples of circumstances that may be deficiencies, significant deficiencies, or material weaknesses are listed at AU-C 260.A37.

(b) Findings that meet the requirements of AAG-GAS 4.12 should 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. *As required by Uniform Guidance, only the findings that meet the requirements of AAG-GAS 23.35 Table 23-2 should 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." Therefore, any findings required by this statute, that do not meet the requirements of AAG-GAS described above to be included in the report on internal controls or the schedule of findings and questioned costs, must be presented in a *separate schedule of findings labeled "Section 12-6-5 NMSA 1978 findings" in the back of the audit report following the schedule of findings that do meet the applicable AAG-GAS reporting requirements.* Per the uniform guidance at AAG-GAS 23.45 there is no requirement for such findings to be included or referenced in the uniform guidance compliance report.

(2) Prior year findings:

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(a) GAGAS Section 4.05 (2011 revision) requires auditors to “evaluate whether the audited entity has taken appropriate corrective action to address findings and recommendations from previous engagements that could have a material effect on the financial statements or financial data significant to the audit objectives. When planning the audit, auditors should ask management of the audited entity to identify previous audits, attestation engagements, and other studies that directly relate to the objectives of the audit, including whether related recommendations have been implemented. Auditors should use this information in assessing risk and determining the nature, timing, and extent of current audit work, including determining the extent to which testing the implementation of the corrective actions is applicable to the current audit objectives.” In addition to this standard, the IPA will report the status of *all* prior-year findings in the current year audit report including the current year finding reference number (if repeated) followed by the original finding reference number, appearing in brackets, the title of the finding, and whether the finding has been resolved or repeated in the current year. Findings from special audits performed by the state auditor must be included in the findings of the annual financial and compliance audits of the related fiscal year.

(b) Uniform guidance regarding single audit prior year findings: uniform guidance Section 200.511, states, the auditee is responsible for follow-up and corrective action on all audit findings. As a part of this responsibility, the auditee must prepare a corrective action plan for current year audit findings and a summary schedule of prior audit findings. The corrective action plan and the summary schedule of prior audit findings must include the reference numbers the auditor assigns to the audit findings. The corrective action plan and summary schedule of prior audit findings must include findings relating to the financial statements which are required to be reported in accordance with government auditing standards. Per uniform guidance 200.511(c) *the auditee must prepare, in a document separate from the auditor’s findings, a corrective action plan to address each audit finding included in the current year auditor’s reports. The corrective action plan must provide the names(s) of the contact persons(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, the corrective action plan must include an explanation and specific reasons. The summary schedule of prior audit findings must report the status of all audit findings included in the prior audit’s schedule of findings and questioned costs. Since the summary schedule may include audit findings from multiple years, it must include the fiscal year in which the finding initially occurred. The summary schedule must also include audit findings reported in the prior audit’s summary schedule of prior audit findings except audit findings listed as corrected in accordance with Paragraph (2) of Subsection I of 2.2.2.10 NMAC, or no longer valid or not warranting further action in accordance with Item (iii) of Subparagraph (b) of Paragraph (2) of Subsection I of 2.2.2.10 NMAC.*

(i) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.

(ii) When audit findings were not corrected or were only partially corrected, the summary schedule must describe the reasons for the finding’s recurrence and planned corrective action, and any partial corrective action taken. When corrective action taken is significantly different from corrective action previously reported in a corrective action plan or in the federal agency’s or pass-through entity’s management decision, the summary schedule must provide an explanation.

(iii) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position must be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred: two years have passed since the audit report in which the findings occurred was submitted to the federal audit clearinghouse (FAC); the federal agency or pass-through entity is not currently following up with the auditee on the audit findings; and a management decision was not issued. A management decision is a written decision to the auditee from the federal awarding agency or pass-through entity as to what corrective action is necessary.

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(vi) AAG-GAS 23.45 footnote 37 states that the summary schedule of prior year findings and the corrective action plan are two documents that are required to be included in the reporting package submitted to the FAC.

(c) Pursuant to AAG-GAS 23.48 the auditor must 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.

(3) Current-year audit findings:

(a) The data collection form requires federal award audit finding reference numbers to: have a standard format with the four digit audit year, a hyphen and a three digit sequence number (e.g. 2013-001, 2013-002...2013-999); and match the finding reference numbers on the data collection form (form SF-SAC) to those reported in the schedule of findings and questioned costs and the applicable auditor's report. Therefore, all current year audit findings will follow this required format. Depending on the IPA's classification of the finding, the finding reference number should be followed by one of the following descriptions: "material weakness" in internal control; "significant deficiency" in internal control; "material non-compliance"; "other non-compliance"; or "findings that do not rise to the level of a significant deficiency." Any unresolved prior-year findings must be repeated in the current year using this format. However, as noted above, the status report of all prior year findings will include the old original finding number in brackets, following the new standardized finding reference number, to enable the report user to see what year the finding was originally written.

(b) Written audit findings should be prepared and submitted to the agency management 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. *Findings are not subject to negotiation. The agency should also prepare "planned corrective actions" as required by GAGAS 4.33.* The agency shall respond, in writing, to the IPA's audit findings within 10 business days. The agency's responses to the audit findings and the "planned corrective actions" should be included in the finding after the recommendation. Pursuant to GAGAS 4.38, "When the audited agency's comments are inconsistent or in conflict with findings, conclusions, or recommendations in the draft report, or when planned corrective actions do not adequately address the auditor's recommendations, the auditors should evaluate the validity of the audited agency's comments. If the auditors disagree with the comments, they should explain in the report their reasons for disagreement," after the agency's response. "Conversely, the auditors should modify their report as necessary if they find the comments valid and supported with sufficient, appropriate evidence." Lack of agency responses within the 10 business days does not warrant a delay of the audit report. Pursuant to GAGAS 4.39, "If the audited agency refuses to provide comments or is unable to provide comments within a reasonable period of time, the auditors may issue the report without receiving comments from the audited entity. In such cases, the auditors should indicate in the report that the audited entity did not provide comments."

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

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

(ii) criteria (should identify the required or desired state or what is expected from the program or operation; should cite 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;

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(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 will serve as a basis for the recommendation);

(v) recommendation addressing each condition and cause; and

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

(4) If appropriate in the auditor's professional judgment, failure to submit the completed audit contract to the office by the due date at Subparagraph (c) of Paragraph (6) of Subsection H of 2.2.2.8 NMAC may be considered a current year compliance finding.

(5) If an agency has entered into any professional services contract with the IPA who performs the agency's annual financial audit, or the scope of work on any professional services contract relates to fraud, and the contract was not approved by the state auditor, this shall be reported as a finding of non-compliance with Subsection N of 2.2.2.8 NMAC.

(6) If an agency subject to the procurement code failed to meet the requirement to have a certified chief procurement officer during the fiscal year, pursuant to 1.4.1.94 NMAC.

(7) Component unit audit findings must be reported in the primary government's financial audit report. This is not required for the statewide CAFR unless a legally separate component unit's (like NM finance authority's or NM mortgage finance authority's) finding is significant to the state as a whole.

(8) A release 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 will require an additional finding in the audit report.

(9) When auditors detect immaterial violations of provisions of contracts or grant agreements or abuse that are required to be reported by Section 12-6-5 NMSA 1978, that do not rise to the level of significant deficiencies or material weaknesses, those findings should be classified as warranting the attention of those charged with governance, since Section 12-6-5 NMSA 1978 requires any violation of law found by the audit to be set out in detail in the report. The auditor must 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. (see the report on internal control examples at www.saonm.org).

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

J. Exit conference and related confidentiality issues:

(1) The IPA must hold an exit conference with representatives of the agency's governing authority and top management including representatives of any component units (housing authorities, charter schools, hospitals, foundations, etc.) if applicable. The office has the authority to notify the agency or IPA that the state auditor should 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 must invite the state auditor or his designee to attend all such conferences. If component unit representatives cannot attend the combined exit conference, a separate exit conference must be held with the component unit's governing authority and top management. *Unless the cost of the audit is five thousand dollars (\$5,000) or less (excluding GRT), the exit conference must be held in person; a telephone or webcam exit conference will not meet this requirement. If extraordinary circumstances exist that will prevent the exit conference from taking place in person, the IPA shall submit a written request for an exemption from this requirement to the state auditor at least 48 hours prior to the scheduled exit conference. The written request for the exemption must include the justification for the request and the concurring signature of the agency. The IPA may not hold a telephonic or webcam exit conference without prior written approval of*

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the state auditor. The date of the conference(s) and the names and titles of personnel attending must be stated in the last page of the audit report.

(2) The IPA with the agency's cooperation shall deliver to the agency a complete and accurate draft of the audit report (stamped "draft"), a list of the "passed audit adjustments," and a copy of all the adjusting journal entries before the exit conference. The draft audit report shall include the management's discussion and analysis (MD&A), independent auditor's report, a complete set of financial statements, notes to the financial statements, required schedules, audit findings that include responses from agency management, status of prior-year audit findings, and the reports on internal control and compliance required by *government auditing standards* and the *uniform administrative requirements, cost principle, and audit requirements for federal awards*.

(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 office, and has become a public record. Agencies subject to the Open Meetings Act who wish to have a quorum of the governing board present at the exit conference will have to schedule the exit conference during a closed meeting in compliance with the act, in order to avoid disclosing audit information that is not yet public record, in a public meeting.

(4) Once the audit report is officially released to the agency by the state auditor (by a release letter) and the required waiting period of five calendar days has passed, unless waived by the agency in writing, the audit report shall be presented by the IPA, to a quorum of the governing authority of the agency at a meeting held in accordance with the Open Meetings Act, if applicable. The presentation of the audit report should be documented in the minutes of the meeting. See AU-C 260.12 to 260.14 for information that should be communicated to those charged with governance.

(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 4.30 to 4.32 and GAGAS 4.40 to 4.44.

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

(1) GAGAS 2011 Revision, Paragraphs 4.06 to 4.08 state that "in addition to the AICPA requirements concerning fraud and non-compliance with provisions of laws and regulations, when performing a GAGAS financial audit, auditors should 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. Abuse involves 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. Abuse also includes misuse of authority or position for personal financial interests or those of an immediate or close family member or business associate. Abuse does not necessarily involve fraud, or non-compliance with provisions of laws, regulations, contracts, or grant agreements. Because the determination of abuse is subjective, auditors are not required to detect abuse in financial audits. However, as part of a GAGAS audit, if auditors become aware of abuse that could be quantitatively, or qualitatively material to the financial statements or other financial data significant to the audit objectives, auditors should apply audit procedures specifically directed to ascertain the potential effect on the financial statements or other financial data significant to the audit objectives. After performing additional work, auditors may discover that the abuse represents potential fraud or non-compliance with provisions of laws, regulations, contracts, or grant agreements."

(2) Pursuant to Section 12-6-6 NMSA 1978 (criminal violations), an agency or IPA shall notify the state auditor immediately, in writing, upon discovery of any violation of a criminal statute in connection with financial affairs. The notification shall include an estimate of the dollar amount involved, and a complete description of the violation, including names of persons involved and any action taken or planned. If warranted, the state auditor may cause an audit of the financial affairs and transactions of the agency 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

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audit or attestation engagement regarding the financial affairs and transactions of the agency relating to financial fraud, waste and abuse.

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

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

M. Public monies:

(1) Definition - 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 must be authorized by legislation (Section 6-4-2 NMSA 1978 and MAPS FIN 11.4).

(2) If the agency has material derivatives or securities investments the auditor should seek the assistance of audit firm staff or of a specialist from outside the firm, that has the skill or knowledge required to plan and perform auditing procedures for specific assertions about derivatives and securities. See the related requirements at: AU-C 501, audit evidence-specific considerations for selected items, Paragraph .04 through .10; and AU-C 620, using the work of an auditor's specialist.

(3) List of individual deposit accounts and investment accounts required by 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) and the statewide human resources accounting and management reporting system (SHARE) fund number (state agencies only);

(b) account name;

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

(i) types of deposits are non-interest bearing checking, interest bearing checking, savings, money market accounts, certificates of deposit; and

(ii) types of investments are state treasurer general fund investment pool (SGFIP), state treasurer local government investment pool (LGIP), U.S. treasury bills, notes, bonds and strips; and 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, federal financing bank, federal farm credit, financial assistance corporation, including the specific name of each bond, stock, commercial paper, bankers acceptances, mutual fund, foreign currency, etc.

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

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

(f) In auditing the balance in the investment in the state general fund investment pool (SGFIP) of a state agency, the IPA should 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 should 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. For example, some agencies receive only the cash annually appropriated to the agency, and process all expenditures through SHARE, resulting in low risk that the investment in SGFIP could be

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misstated. Every state agency audit report should include disclosure in light of the reconciliation issues at the statewide level, and what the agency is doing to mitigate its risk of misstated SGFIP account balances. Taking all these and more facts gained during audit procedures into consideration, the IPA should use his or her professional judgment to determine each agency's risk of misstatement in the investment in the SGFIP and write findings and modify opinions as deemed appropriate by the IPA. The state auditor requires the IPAs auditing cash of state agencies to obtain a confirmation of cash at the individual agency level from the state treasurer's office (state agencies only).

(4) Pledged collateral:

(a) All audit reports should disclose the collateral requirements in the notes to the financial statements. In addition, there should be a supplementary schedule or note to the financial statements that discloses the collateral pledged by each bank and savings and loan association (S & L) that is a depository for public funds. The schedule should 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) If the pledged collateral *for deposits in banks, savings and loan associations, or credit unions*, in an aggregate amount is not equal to one half of the amount of public money in each account (Section 6-10-17 NMSA 1978), there should be a finding in the audit report. 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 shares insurance fund (NCUSIF) according to Section 6-10-16 NMSA 1978. The collateral requirements should be calculated separately for each bank and disclosed in the notes as follows to show compliance and GASB 40 disclosure information (for line items iv-viii, delete the line items if custodial credit risk category does not apply):

Depository Account		Bank Balance
(i)	Insured	\$250,000
	Collateralized:	
(ii)	Collateral held by agency's agent in the agency's name	50,000
(iii)	Collateral held by pledging bank's trust department in the agency's name	75,000
(iv)	Collateral held by pledging bank's trust department not in the city's name	25,000
(v)	Uninsured and uncollateralized	50,000
Total Deposits		\$450,000

(c) Custodial credit risk is defined as the risk that the government's deposits may not be returned to it in the event of a bank failure. Per GASBS 40.8, the notes to the financial statements should disclose the amount of deposits subject to custodial credit risk for the categories above. To determine compliance with the fifty percent pledged collateral requirement of Section 6-10-17 NMSA 1978, the following disclosure must be made for each financial institution:

	Fifty percent pledged collateral requirement per statute	\$100,000
	Total pledged collateral	(150,000)
	Uninsured and uncollateralized	(fifty thousand dollars (\$50,000))

(d) Repurchase agreements must be covered by one hundred and two percent of pledged

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collateral per Section 6-10-10(H) NMSA 1978. Disclosure similar to that shown above is also required for the one hundred two percent pledged collateral requirement.

(e) Per Section 6-10-16(A) 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 (FINRA), and are rated medium grade or “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 Section 6-10-16 NMSA 1978.

(g) State agency investments in the office of 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 should refer the reader to the state treasurer’s separately issued financial statements which disclose the collateral pledged to secure state treasurer cash and investments. See Paragraph (14) of Subsection A of 2.2.2.12 NMAC for related GASBS 40 disclosure requirements.

(h) If an agency has other “authorized” bank accounts, pledged collateral information should 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 should 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, the office of the state treasurer’s collateral bureau monitors pledged collateral for all state funds held by state agencies in such “authorized” bank accounts.

(5) State treasurer’s external investment pool (local government investment pool):

(a) agencies that have investments in the state treasurer’s short-term investment fund must disclose the information required by GASB Statement No. 31 Paragraph 15 in the notes to the financial statements; the following information may be helpful for this disclosure;

(b) the investments are valued at fair value based on quoted market prices as of the valuation date;

(c) the state treasurer local government investment pool is not SEC registered; the state treasurer is authorized to invest the short-term investment funds, with the advice and consent of the state board of finance, in accordance with Subsection I of Section 6-10-10 through Subsection O of Section 6-10-10 and Paragraph (1) of Subsection A and E of Section 6-10-10 NMSA 1978;

(d) the pool does not have unit shares; per Paragraph (1) of Subsection F of Section 6-10-10 NMSA 1978, at the end of each month all interest earned is distributed by the state treasurer to the contributing entities in amounts directly proportionate to the respective amounts deposited in the fund and the length of time the amounts were invested;

(e) participation in the local government investment pool is voluntary; and

(f) the end of the fiscal year weighted average maturity (interest rate risk in number of days) available on the state treasurer’s website at http://www.nmsto.gov/gasb_40_disclosure.

N. 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 required 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 required to balance the budget (or fund balance on the cash basis).

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(2) The differences between the budgetary basis and GAAP basis revenues and expenditures should be reconciled. *This reconciliation is required at the individual fund level.* If the required budgetary comparison information is included in the basic financial statements, the reconciliation should be included on the statement itself (preferred) or in the notes to the financial statements. If the budgetary comparison is presented as supplemental information as required by Subparagraph (c) of Paragraph (3) of Subsection N of 2.2.2.10 NMAC below, the reconciliation to GAAP basis should be presented at the bottom of the budgetary comparison. If the required budgetary comparison is presented as RSI (for reasons described below in Subparagraph (b) of Paragraph (3) of Subsection M of 2.2.2.10 NMAC) the reconciliation should appear in either a separate schedule or in notes to RSI according to the *AICPA audit and accounting guide, state and local governments*, (AAG-SLV 11.14). Also, the notes to the financial statements should 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 is at the function level for school districts. The legal level of budgetary control for state agencies is explained at Paragraph (11) of Subsection A of 2.2.2.12 NMAC. For additional information regarding the legal level of budgetary control, the IPA should contact the applicable oversight agency, DFA, HED, or PED.

(3) Budgetary comparisons must 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) The basic financial statements must include budgetary comparison statements for only the general fund and major special revenue funds if the budget structure for those funds is similar enough to the GAAP fund structure to provide the necessary information.

(b) The required supplemental information section is the place where the budgetary comparisons should appear for the general fund and major special revenue funds 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. See GASB statement No. 41, budgetary comparison schedules - perspective differences, paragraphs 3 and 10. When budgetary comparisons have to be presented as RSI due to such perspective differences it is a requirement of the state auditor that they be audited and included in the auditor’s opinion. See AAG-SLV 15.65 in the *AICPA audit and accounting guide, state and local governments* (latest edition).

(c) SI is the place where all other budgetary comparison information should appear except the general and major special revenue fund budgetary comparisons. Non-major governmental funds and proprietary funds that have legally adopted budgets (including budgets approved by a resolution) should have budgetary comparisons appearing in the SI section of the report. It is a requirement of the state auditor that budgetary comparison statements presented in the basic financial statements or as RSI or SI be audited and included in the auditor’s opinion. For an example of an opinion that includes SI or RSI see example A-14 in the *AICPA audit and accounting guide, state and local governments* (latest edition).

O. Appropriations to agencies:

(1) Budget related findings:

(a) If actual expenditures exceed budgeted expenditures at the legal level of budgetary control, that fact must 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 required to balance the budget), that fact must also be

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reported in a finding after the auditor confirms the finding with the agency's budget oversight entity (if applicable), since budget deficits are generally not allowed.

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

(a) Special, deficiency, and specific appropriations and capital outlay appropriations funded by severance tax bonds or general obligation bonds of the state must be disclosed in the financial statements. The original appropriation, the appropriation period, expenditures to date, outstanding encumbrances and unencumbered balances should be shown in a supplementary schedule or in a note to the financial statements. This is a special requirement of the state auditor and it does not apply to the statewide CAFR audit.

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

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

All financial audits performed under this rule are required to 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. Inquiry alone is not sufficient testing of internal controls. The requirement to test internal controls applies even in circumstances when the auditor has assessed control risk at maximum. *This is a special requirement of the state auditor.* This requirement does not require an auditor to retest controls previously tested during the performance of an AU-C 402 (previously SAS 70) audit, when the auditor is relying on the AU-C 402 audit report.

Q. Lease purchase agreements:

(1) The New Mexico supreme court has held that it is unconstitutional for agencies to enter into lease purchase agreements after January 9, 1989, unless special revenue funds are the designated source of payments for the agreement (any agreements executed prior to that date may not be extended or amended without compliance with the guidelines of *Montano v. Gabaldon*, 108 N.M. 94, 766 P.2d 1328).

(a) The attorney general interpreted *Montano* to mean that long-term contracts for professional services, leases, and real property rental agreements may still be entered into within the constraints of the Bateman Act and the Procurement Code. However, any agreement which is in effect for more than one fiscal year, including leases of real property, must have a provision allowing the agency to terminate the agreement at will at any time, or at least at the end of each fiscal year, without penalty. Furthermore, the agency must have no "equitable or moral" duty to continue to make payments under the contract. The agreements must also contain a non-appropriation clause allowing for termination of the agreement in the event the agency decides not to appropriate funds for each fiscal year.

(b) The attorney general subsequently opined that if the source of funds to repay the debt is solely repaid from the project revenue or from a special non-general-tax fund and not from any general tax revenue, then the debt, be it in the form of bonds or a lease purchase agreement, is not the sort of debt which triggers the constitutional requirement of approval by the voters. This is the teaching of the *Connelly* case relied on by the court in *Montano*. *Montano* did not reverse *Connelly*, *Seward* and the other cases which have consistently limited the application of constitutional restrictions to debts which are paid out of general tax revenues.

(2) If specific questions as to the constitutionality of a particular lease agreement remain, an independent legal opinion should be obtained from the attorney general.

R. Required auditor's reports:

(1) The independent auditor's report should follow the examples contained in the AICPA audit and accounting guide, government auditing standards and single audits (latest edition), chapter 4, appendix - illustrative auditor's reports under government auditing standards, example 4-1 (including the reference to the schedule of expenditures of federal awards when applicable), and the AICPA audit and accounting guide state and local governments (latest edition), Chapter 15, Appendix A - illustrative auditor's reports. Example A-14 illustrates how to opine on the basic financial statements and the combining and individual fund financial statements presented as supplementary information. See also

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the guidance provided in Chapter 15, Appendix A, Footnote 3 regarding wording that should be used when opining on budgetary statements on the GAAP basis. All independent auditor's reports should include a statement that the audit was performed in accordance with auditing standards generally accepted in the United States of America *and with applicable government auditing standards* per GAGAS 4.18. This statement should be modified in accordance with GAGAS 2.24b if some GAGAS requirements were not followed. As applicable, the first sentence of the AU-C 725 opinion paragraph should state that the audit was conducted for the purpose of forming opinions on the basic financial statements, the combining and individual financial statements, and the budgetary comparisons. See also the report example on the office website at www.saonm.org. Reports for single audits of fiscal years beginning on or after December 26, 2014 should have all 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 4.88 Example 4-1);

(2) 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 should follow the applicable AICPA report examples available in the AICPA audit and accounting guide, *government auditing standards and three single audits*, (latest edition) examples 4-3 to 4-9 Chapter 4. See the report examples on the office website at www.saonm.org.

(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 will be considered a violation of the terms of the audit contract and may result in further action by the state auditor. See also Paragraph (5) of Subsection Q of Section 2.2.2.8 NMAC above regarding this issue.

(3) The report on compliance for each major federal program; *report on internal control over compliance - single audit report examples under uniform guidance for audits of fiscal years beginning on or after December 26, 2014* are available in the AICPA audit and accounting guide, government auditing standards and single audits, 23 Paragraph 23.67 Chapter, Appendix - illustrative auditor's reports under the uniform guidance for federal awards. *Single audits of fiscal years beginning before December 25, 2014 would follow the guidance of OMB circular A-133*. Report examples for single audits performed pursuant to OMB circular A-133 are available in the AICPA audit and accounting guide, government auditing standards and single audits, Paragraph 13.58 Chapter 13, Appendix - illustrative auditor's reports under circular A-133.

(4) One report cover: the state auditor requires the financial statements, supplemental information, other information required by Subparagraph (g) in Paragraph (2) of Subsection A of 2.2.2.10 NMAC, and the following reports to be *included under one report cover*: the independent auditor's report including the AU-C 725 report on supplemental information; the AU-C 720 other matter paragraph to disclaim an opinion on other information; 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; report on internal control over compliance (required by *uniform administrative requirements, cost principles, and audit requirements for federal awards* or OMB circular A-133 for older reports). If applicable, the independent auditor's report must include the AU-C 725 opinion on the schedule of expenditures of federal awards and the HUD financial data schedule (required by HUD guidelines on reporting and attestation requirements of uniform financial reporting standards). The report must also contain a table of contents and an official roster. The IPA should submit a written request for an *exemption* from the "one report cover," and receive prior written approval from the state auditor, in order to present any of the above information under a separate cover.

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S. Disposition of property: Sections 13-6-1 and 13-6-2 NMSA 1978 govern the disposition of obsolete, worn-out or unusable tangible personal property owned by state agencies, local public bodies, school districts, and state educational institutions. Pursuant to Subsection A of Section 13-6-4 NMSA 1978, municipalities are exempt from this requirement. At least 30 days prior to any disposition of property on the agency inventory list described below in Subsection U of 2.2.2.10 NMAC, written notification of the official finding and proposed disposition duly sworn and subscribed under oath by each member of the authority approving the action must be sent to the state auditor.

T. Joint powers agreements and memorandums of understanding:

(1) All joint powers agreements (JPA) and memorandums of understanding (MOU) must be listed in a supplementary schedule in the audit report. The statewide CAFR schedule should include JPAs and MOUs that are significant to the state as a whole. The schedule should include the following information for each JPA or MOU:

- (a) participants;
- (b) party responsible for operations;
- (c) description;
- (d) beginning and ending dates of the JPA or MOU;
- (e) total estimated amount of project and portion applicable to the agency;
- (f) amount the agency contributed in the current fiscal year;
- (g) audit responsibility;
- (h) fiscal agent if applicable; and
- (i) name of government agency where revenues and expenditures are

reported.

(2) For self-insurance obtained under joint powers agreements or memorandums of understanding, see the GASB Codification Section J50.113.

U. Capital asset inventory:

(1) The Audit Act (Section 12-6-10 NMSA 1978) requires agencies to capitalize only chattels and equipment that cost over \$5,000. All agencies are required to update their capitalization policy and implement it in accordance with the law. This change in capitalization threshold should be accounted for prospectively from June 17, 2005 forward, as a change in estimate per GASBS 62.69. Older capital assets that were capitalized under previous lower capitalization thresholds should not be removed from the capital assets list during the implementation of the most recent capitalization threshold increase. Any new items received after June 17, 2005 should be added to the inventory list only if they meet the new capitalization threshold. Regarding safeguarding and management of assets that do not meet the capitalization threshold, the state auditor encourages agencies to maintain a separate accountability report for those items that cost five thousand dollars (\$5,000) or less.

(2) Subsection A of Section 12-6-10 NMSA 1978 requires each agency to conduct an annual physical inventory of movable chattels and equipment on the inventory list at the end of each fiscal year. The agency shall certify the correctness of the inventory after the physical inventory. This certification should be provided to the agency's auditors.

V. Schedule of changes in assets and liabilities for the agency funds: Agency funds are excluded from the statement of changes in fiduciary net position (GASBS 34 Paragraph 110 as amended by GASBS 63) because they have no "net position." Therefore it is a requirement of the state auditor that a schedule of changes in assets and liabilities for the agency funds be included as SI for all agencies that have agency funds. The schedule should show additions and deductions for each agency fund except for school districts. School districts should see Subparagraph (e) of Paragraph (4) of Subsection C of 2.2.2.12 NMAC for more information regarding the presentation of the statement of changes in assets and liabilities agency funds for school districts. The schedule should appear toward the end of the table of contents and requires an AU-C 725 opinion in the independent auditor's report.

W. 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

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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 will have to apply the criteria of GASB 14 Paragraph 132 (as amended by GASBS 61) 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 will have to contract separately for an audit separate from the audit of the municipality or county that approved it.

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

(1) After their FY15 audit reports are audited and released, PERA and ERB plan to provide each of their participant employers with their allocated pension liability information as of June 30, 2015. The state auditor is requiring that:

(a) prior to distribution of this information to the participant employers, the PERA and ERB will obtain an audit of the schedules of allocated pension liability information, pursuant to AU-C 805, special considerations - audits of single financial statement and specific elements, accounts, or items of a financial statement and government auditing standards;

(b) pursuant to AU-C 805.16, the PERA and ERB auditors will provide PERA and ERB with a separate report on the AU-C 805 audit performed;

(c) the AU-C 805 audits and resulting separate reports on the PERA and ERB schedules of allocated pension liability information must be submitted to the office for review and release pursuant to 2.2.2.13 NMAC, prior to distribution to the PERA and ERB participant employers; and

(d) as soon as the AU-C 805 reports, including the allocated pension information, become public record, PERA and ERB will make the information available to the participant employers.

(2) On the subject of whether the liability should be included in the stand-alone financial statements of funds see implementation guide-GASB statement 68, question and answer 122, that says, "except for blended component units, which are discussed in statement 68, questions 34 and 35 does not establish specific requirements for allocation of the employer's proportionate share of the collective net pension liability or other pension-related measures to individual funds. However, for proprietary and fiduciary funds, consideration should be given to NCGA paragraph 42, statement 1, as amended, which requires that long-term liabilities that are 'directly related to and expected to be paid from' those funds be reported in the statement of net position or statement of fiduciary net position, respectively." Stand-alone state agency financial statements that exclude the proportionate share of the collective net pension liability of the state of New Mexico based on the above guidance, should include note disclosure referring the reader to the statewide CAFR for the state's pension liability and other pension-related information. The stand-alone report for the New Mexico component appropriation funds should include note disclosure of the net pension liability for all the state agencies of the state of New Mexico.

Y. Uniform administrative requirements: Cost principles, and audit requirements for federal awards: OMB Circular A-133 has been replaced by "uniform guidance for federal awards" (uniform guidance). The standards set forth in Subpart F - Audit Requirements, became effective December 26, 2013, and apply to audits of fiscal years beginning on or after December 26, 2014 (calendar-year-end December 31, 2015 and FY16 audits). For one full fiscal year after the effective date of the uniform guidance, non-federal entities must comply with the terms and conditions of their federal award, which will specify whether the uniform guidance applies. Regarding the new procurement standards, "the non-federal entity must document whether it is in compliance with the old or new

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standard, and must meet the documented standard. For example, the first full fiscal year for a non-federal entity with a June 30th year end would be the year ending June 30, 2016” (FY16). “The single audit compliance supplement will instruct auditors to review procurement policies and procedures based on the documented standard. For future fiscal years, all non-federal entities will be required to comply fully with the uniform guidance for federal awards Section 200.110, frequently asked questions for OMB uniform administrative requirements, cost principles, and audit requirement for federal awards at 2 CFR 200.

Z. New standards that become effective in FY16 are:

- (1) GASBS Statement 72, fair value measurement and application;
- (2) the latter underlined portion of GASBS Statement 73, accounting and financial reporting for pensions and related assets that are not within the scope of GASBS statement 68, and amendments to certain provisions of GASBS statements 67 and 68; and
- (3) GASBS statement 76, the hierarchy of generally accepted accounting principles for state and local governments;
- (4) For non-federal entities that expend seven hundred fifty thousand dollars (\$750,000) or more in federal awards the audit requirements of Subpart F of the uniform administrative requirements, cost principles, and audit requirements for federal awards, become effective for audits of fiscal years beginning on or after December 26, 2014 (in general, fiscal years ending December 31, 2015 and later). Such a non-federal entity must have a single or program-specific audit conducted for that fiscal year.

AA. Additional new standard to note: GASB Statement 77, tax abatement disclosures, will become effective for financial statements for periods beginning after December 15, 2015 (FY17). This statement requires disclosure of tax abatement information about:

- (1) a reporting government’s own tax abatement agreements; and
- (2) those that are entered into by other governments that reduce the reporting government’s tax revenues. Governments should start preparing to implement this new standard. [2.2.2.10 NMAC - Rp, 2.2.2.10 NMAC, 3-15-16]

2.2.2.11 THE ACCOUNTABILITY IN GOVERNMENT ACT:

A. This section applies to agencies that have performance measures associated with their budgets. The purpose of the accountability in Government Act (Sections 6-3A-1 to 6-3A-9 NMSA 1978) is to provide for more cost-effective and responsive government services by using the state budget process and defined outputs, outcomes and performance measures to annually evaluate the performance of state government programs.

B. Agency performance measures are included in the General Appropriations Act. The agency shall include a schedule of performance data (outcomes, outputs, efficiency, etc.) if the schedule is required by an oversight agency such as the legislative finance committee, DFA, HED or PED, and preparation guidelines are issued by the oversight agency.

C. The auditor’s responsibilities for performing procedures and reporting on supplemental information are provided in AU-C Section 725, supplementary information in relation to the financial statements as a whole. The auditor should apply the procedures required by AU-C 725 to the agency’s performance data included in the schedule in order to determine whether it is fairly stated, in all material respects, in relation to the financial statements as a whole.

D. The IPA should include this schedule in the related reporting in the other-matter paragraph pursuant to AU-C 725.09, regarding whether such information is fairly stated in all material respects in relation to the financial statements as a whole. [2.2.2.11 NMAC - Rp, 2.2.2.11 NMAC, 3-15-16]

2.2.2.12 SPECIFIC CRITERIA: The specific criteria should be considered in planning and conducting governmental audits. These requirements are not intended to be all-inclusive; therefore,

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the state New Mexico statutes annotated (NMSA) and New Mexico administrative code (NMAC) should be reviewed while planning governmental audits.

A. Pertaining to audits of state agencies:

(1) Due dates for agency audits: Subsection D of Section 12-6-3 NMSA 1978 states that state agency reports are due no later than 60 days after the state auditor receives notice from the financial control division of DFA that the agency's books and records are ready and available for audit. The financial control division requires that each agency submit a management representation letter documenting management's responsibility for the accounting records, the agency has recorded all transactions properly in SHARE, and the agency is ready and available for audit. In addition, the financial control division mandates that each agency, with the help of its independent auditor, identify and submit with the management representation letter a schedule of deliverables, and agreed to milestones for the audit. The milestones ensure that the agency's books and records are ready and available for audit and the auditor delivers services on time. Once the financial control division receives the management representation letter, the schedule of deliverables, and milestones, the financial control division will notify the state auditor in writing regarding the expected audit deadline for the agency. The 60 days to the audit deadline will be based on the date of financial control division's notification to the state auditor, which will be based on input from the agency to the financial control division and the agency's schedule of deliverables and milestones. *State agency reports are due no later than December 1 after the close of the fiscal year.*

(2) Materiality at the *individual fund level* means at the individual SHARE fund level for state agencies. All the individual SHARE funds should be reported in the financial statements and opined on in the independent auditor's report.

(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 should be reported for the respective amount due in both the government-wide financial statements and the fund financial statements (NCGAS 1 Paragraph 70). Per Section 6-10-4 NMSA 1978, the "*actual*" expenditures in the budgetary comparison exclude any accounts payable that were not paid timely and therefore require a request to the financial control division to pay prior year bills out of current year budget. They will be paid out of the budget of the following fiscal year. An agency's reversions should be 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 will result 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 should show net position as:

(i) net investment in capital assets;
(ii) restricted (distinguishing between major categories of restrictions); and

(iii) unrestricted pursuant to GASBS 63.10, "restricted component of net position consists of restricted assets reduced by liabilities and deferred inflows of resources related to those assets; generally, a liability relates to restricted assets if the asset results from a resource flow that also results in the recognition of a liability or if the liability will be liquidated with the restricted assets reported;" pursuant to GASBS 63.11, "the unrestricted component of net position is the net amount of the assets, deferred outflows of resources, liabilities, and deferred inflows of resources that are not included in the determination of net investment in capital assets or the restricted component of net position."

(b) Governmental fund financial statement fund balances should be reported in accordance with GASBS 54. This statement was effective for financial statements for periods beginning after June 15, 2010 (FY11).

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(c) The statement of fiduciary net position (fiduciary fund financial statement) should show net position as “held in trust for ” (GASBS 34 Paragraph 108 as amended by GASBS 63).

(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 is required to record all audit adjusting journal entries in SHARE. The financial information in SHARE is to agree to the agency’s audited financial statements, with the exception of accounts payable as explained in Paragraph (3) of Subsection A of 2.2.2.12 NMAC (accounts payable). If the independent auditor finds that the agency did not record all audit adjusting journal entries, the auditor must include in a finding this instance of non-compliance with Sections 6-5-2.1 and 6-5-4.1 NMSA 1978. If the agency maintains a separate accounting system, it should be reconciled with the SHARE system and all applicable adjustments should be recorded in SHARE periodically through the fiscal year. The financial control division provides to agencies:

- (i) the manual of model accounting practices (MAPs);
- (ii) various white papers, yearly closing instructions; and
- (iii) various accounting guideline memos;
- (iv) these documents provide guidance for an auditor regarding

policy and procedure requirements and they are available on the financial control division’s website at <http://www.nmdfa.state.nm.us> under “resource information.”

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

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 must be presented in the audit report by the revenue categories shown below and by the expenditure categories that appear in the agency’s final approved budget.

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

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

(6) Reversions to state general fund:

(a) All reversions to the state general fund must be identified in the financial statements by the fiscal year of appropriation (i.e., reversion to state general fund - FY 15). The gross amount of the appropriation and the gross amount of the reversion must be shown separately.

(b) Subsection A of Section 6-5-10 NMSA 1978 requires “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.

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(7) Nonreciprocal (not payments for materials or services rendered) interfund (internal) activity includes;

(a) transfers; and

(b) reimbursements (GASBS 34 Paragraph 410):

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

(ii) inter-agency transfers (between an agency's internal funds and other funds of the state that are outside the agency such as state general fund appropriations, special appropriations, bond proceeds appropriations, reversions to the state general fund, and transfers to/from other state agencies) should be segregated from intra-agency transfers and should be 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 must be shown; the schedule should be presented on the modified accrual basis; the IPA is responsible for performing audit procedures on all such inter-agency transfers.

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

(i) if the inter-agency transfer is between a blended component unit of the state and other funds of the state, then the component unit's separately issued financial statements should 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 would be reclassified as transfers (GASBS 34 Paragraph 318);

(ii) all resource flows between a discretely presented component unit of the state and other funds of the state are required to 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 Paragraph 318).

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

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

(8) General service 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 must capitalize those assets based on actual amounts expended in accordance with GSD instructions issued in 2.20.1.10 NMAC, valuation of assets.

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

(10) Independent auditor's report:

(a) The independent auditor's report for state agencies, district attorneys, district courts, and the educational institutions created by New Mexico Constitution Article XII, Section 11, *must include an explanatory paragraph preceding the opinion paragraph*. The explanatory paragraph should reference the summary of significant accounting principles disclosure regarding the reporting agency, and indicate that the financial statements are not intended to present the financial position and

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changes in financial position of the primary government, the state, but just the financial position and the changes in financial position of the department. The auditor should follow example A-16 in appendix A - illustrative auditor's reports at paragraph 15.103 of the *AICPA audit and accounting guide, state and local governments (latest edition)*.

(b) A statement should be included that the audit was made in accordance with generally accepted *government auditing standards* per GAGAS Paragraphs 4.18 and 2.24 and 2.25.

(11) Budgetary basis for state agencies: Per the General Appropriation Act, Laws of 2015, Chapter 101, Section 3, item L, "for the purpose of administering the General Appropriation Act of 2015, the state of New Mexico shall follow the modified accrual basis of accounting for governmental funds in accordance with the manual of model accounting practices issued by the department of finance and administration." The 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 must be paid out of the next year's budget. As previously stated in Paragraph (3) Subsection A of 2.2.2.12 NMAC (accounts payable), if goods and services were received by the end of the fiscal year but not paid for by the end of the fiscal year, an accounts payable should be recorded for the respective amount due in both the government-wide financial statements and the fund financial statements (NCGAS 1 Paragraph 70). 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 will require a reconciliation of expenditures, see Paragraph (2) of Subsection N of 2.2.2.10 NMAC (budgetary presentation). Since SHARE is the book of record for the state, all transactions are recorded in 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 shall 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 should be disclosed in the notes to the financial statements. Per Section 9 of Subsection C of the General Appropriation Act of 2015, 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 would be the appropriation program level (A-Code, P-Code, R-Code, and Z-Code). The A-Code pertains to capital outlay appropriations (general obligation/severance tax or state general fund). The P-Code pertains to operating funds. The R-Code pertains to American Recovery & Reinvestment Act (ARRA) funds. The Z-Code pertains to special appropriations. Total expenditures for the program need to be compared to the program's approved final budget for compliance.

(12) Accounting for special capital outlay appropriations financed by bond proceeds:

(a) STO administers the debt service funds for various bond issues that are obligations of the state of New Mexico. STO should not report in its basic financial statements bonds payable that are obligations of the state of New Mexico. The proper reporting of these payables and the related bond face amounts (proceeds) is in the state's CAFR. The STO audit report, notes to the financial statements must explain the following:

(i) by statute, STO is responsible for making the state's bond payments and keeping the related records; however, it is not responsible for the related debt, the state is; and

(ii) refer the reader to the detailed supplemental information in the STO audit report and the statewide CAFR; the STO's financial statements include *audited* (SI) regarding the state of New Mexico bond obligations; the SI schedules must show;

(iii) the beginning and end-of-year bond payable balances, increases and decreases (separately presented), and the portions of each bond issuance that are due within one year, as required by GASBS 34 Paragraph 119;

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(iv) the details of debt service requirements to maturity required by GASBS 38 Paragraph 10; and

(v) any violations of bond covenants and related actions taken to address violations of bond covenants, required by GASBS 38 Paragraph (9) and Section 12-6-5 NMSA 1978.

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

(13) Amounts "due from other state agencies" and "due to other state agencies": If a state agency has amounts "due from" or "due to" other state agencies in its balance sheet, the notes should 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.

(14) Investments in the state treasurer's general fund investment pool (SGFIP): these investments should be recorded as investments in the statement of net position and the balance sheet, not as cash or cash equivalents. The notes to the financial statements should contain the following disclosures for the SGFIP as required by GASBS 40:

(a) an explanation that credit risk is the risk that an issuer or other counterparty to an investment will not fulfill its obligations, and a statement that the SGFIP is not rated for credit risk (GASBS 40 Paragraph 7);

(b) interest rate risk:

(i) an explanation that interest rate risk is the risk that changes in interest rates will adversely affect the fair value of an investment;

(ii) disclosure required by GASB 40 Paragraph 15, of the agency's SGFIP investment fair value as of the end of the fiscal year, and the maturities of the SGFIP for the fiscal year (per DFA and STO); and

(iii) a statement that the agency does not have an investment policy that limits investment interest rate risk.

(c) the disclosure should also refer the reader to the separate audit report for the state treasurer's office for additional information regarding the SGFIP.

(15) Format for the statement of activities: state agencies that have more than one program or function must use the financial statement format like GASBS 34, Illustrations B-1 through B-4(b). The simplified statement of activities (GASBS 34, illustration B-5) should not be used for agencies that have multiple programs or functions. GASBS 34 Paragraph 41 requires governments to report direct expenses for each function.

(16) Oversight duties of the department of finance and administration's financial control division: on October 3, 2008, the state controller and the state auditor distributed a letter to agencies regarding the statewide financial reporting & accountability bureau's (SFRAB's) request for agencies' draft financial statements for the preparation of the CAFR for the state. Agencies were concerned about violating Paragraph (4) of Subsection B of 2.2.2.9 NMAC, delivery and release of the audit report. Section 6-5-2.1.S NMSA 1978 provides the financial control division to "have access to and authority to examine books, accounts, reports, vouchers, correspondence files and other records, bank accounts, money and other property of a state agency." In addition, Section 6-5-4.1 NMSA 1978 mandates that FCD shall compile the CAFR. After some consideration and discussion of the conflicting regulations, the state controller and the state auditor concluded, "pursuant to these rules, Sections 6-5-4.1

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and 12-6-5 NMSA 1978 should be construed to give effect to both statutes and the corresponding administrative rules. Therefore, an agency shall provide a copy of its draft audited financial statements to financial control division in order that the division may compile the CAFR. The agency's audit report is not public record unless released in accordance with Section 12-6-5 NMSA 1978. The unaudited draft financial statements submitted to DFA shall exclude the opinions and findings. Submission of the unaudited draft financial statements is the responsibility of the agency and not the auditor. The unaudited draft financial statements submitted to DFA shall exclude the opinion and findings. Submission of the unaudited draft financial statements is the responsibility of the agency and not the audit To review the entire letter, the DFA-FCD oversight letter, go to the financial control division website at: <http://www.nmdfa.state.nm.us/uploads/FileLinks/293b21bdb044c04bd0dbc6de01def7e/DFA-FCD%20Oversight%20Letter.pdf>.

B. Pertaining to audits of housing authorities:

(1) Housing authorities within the state of New Mexico consist of regional housing authorities, component units or departments of local governments, component units of housing authorities, and a housing authority created by an intergovernmental agreement between a city and county that is 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 or component unit of a primary government, must be included in the financial audit report of the primary government by discrete presentation unless an exemption from this requirement has been obtained from the state auditor.

(a) Discrete presentation shows financial data of the component unit in a column to the right of and separate from the financial data of the primary government. See GASBS 14 Paragraphs 44 through 50, as amended.

(b) The primary government in cooperation with its auditor must make the determination whether the housing authority is a component unit of the primary government. See Paragraph (1) of Subsection A of 2.2.2.10 NMAC for guidance in this determination. In the event the primary government and auditor determine that the housing authority is a department of, rather than a component unit of the primary government, a request for exemption from the discrete presentation requirement must be submitted to the state auditor, by the primary government, explaining why the housing authority should not be a discretely presented component unit. The request for exemption must include evidence that the housing authority is not a separate legal agency from the primary government and that the corporate powers of the housing authority are held by the primary government. Evidence included in the request must address these issues:

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

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

(iii) the housing authority was authorized under the Municipal Housing Law, Section 3-45-1 et seq. NMSA 1978.

(c) Upon receipt of the exemption granted by the state auditor from the requirement for discrete presentation, the housing authority department or program would be included in the financial report of the primary government like any other department or program of the primary government.

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

(a) Local governments are encouraged to include representatives from the public housing authorities that are departments 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 a separate entrance and exit

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conference with housing authority's management and a member of the governing board. The office has the authority to notify the agency or IPA that the state auditor should 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 must invite the state auditor or his designee to attend all such conferences no later than 72 hours before the proposed conference.

(4) Housing authorities that are component units of a local government:

(a) must account for financial activity in proprietary funds;

(b) are authorized by Subsection E of Section 12-6-3 NMSA 1978, and "at the public housing authority's discretion, may be audited separately from the audit of its local primary government entity; if a separate audit is made, the public housing authority audit shall be included in the local primary government entity audit and need not be conducted by the same auditor who audits the financial affairs of the local primary government entity; the 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) any separate audits of component unit housing authorities must be conducted according to the following requirements.

(i) the primary engagement partner should 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 the use of the work of the component auditors (AU-C 600.15);

(ii) the component unit auditor selected must appear on the office of the state auditor list of eligible independent public accountants;

(iii) the bid and auditor selection processes must comply with the requirements of this rule;

(iv) the office of the state auditor standard contract form must be used;

(v) the primary government, the primary engagement partner, management of the component unit, and the component auditor should all coordinate their efforts to ensure that the audit reports of the component unit and the primary government are submitted by the applicable deadlines at Subparagraph (i) of Paragraph (1) of Subsection A of 2.2.2.9 NMAC.

(vi) all component unit findings must be disclosed in the primary government's audit report.

(vii) any separately issued component unit audit report must be submitted to the state auditor for the review process described in 2.2.2.13 NMAC.

(viii) the audit report will be released by the state auditor separately from the primary government's report under a separate release letter to the housing authority.

(5) Auditors and public housing authorities must follow the requirements of guidelines on reporting and attestation requirements of uniform financial reporting standards (UFRS) for public housing authorities not-for-profit multifamily program participants and their independent accountants, which is available on the U.S. department of housing and urban development website under a search for UFRS. Additional administrative issues related to the audit of public housing authorities follow.

(a) Housing authority audit contracts must include the cost of the audit firm's AU-C 725 opinion on the financial data schedule (FDS). The public housing authority must electronically submit a final approved FDS based on the audited financial statements no later than nine months after the PHA's fiscal year end. The auditor must:

(i) electronically report on his comparison of the electronic FDS submission in the REAC staging data base through the use of an identification (ID) and password;

(ii) include a hard copy of the FDS in the audit report;

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

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

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(b) The audit must include this separate attestation engagement. The preparation and submission cost for this HUD requirement must be included in the audit contract. The IPA shall consider whether any fee accountant used by the housing authority is a service organization. The IPA shall follow applicable guidance at 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 PHA, including the housing authority's schedule of expenditures of federal awards, then 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 Paragraphs 6.18 and 16.15 of the *AICPA audit guide, government auditing standards and single audits* for more information regarding this issue.

C. Pertaining to audits of school districts:

(1) The auditor selection process: in the event that a state-chartered charter school subject to oversight by the PED is not subject to the requirement to use the same auditor as PED, that charter school shall submit its IPA recommendation to PED for approval, prior to submitting the audit contract to the state auditor for approval. This process must be completed in time to meet the deadline for submission of the audit contract to the office. The IPA completed contract that has already been approved by PED is due to the state auditor on or before May 1. In the event the due date falls on a weekend or a holiday the due date will be the next business day.

(2) Audit planning level of materiality:

(a) As explained in Paragraphs (1) and (2) of Subsection A of 2.2.2.10 NMAC, the level of planning materiality and required auditor opinion will be at the individual fund level for the primary government and at the individual fund level for the component units.

(b) If a 501(c) component unit organization had a gross annual income in excess of two hundred fifty thousand dollars (\$250,000), Section 6-5A-1 NMSA 1978 requires that entity to be audited regardless of its materiality in relation to the primary government.

(3) Regional education cooperative (REC) audits:

(a) A separate financial and compliance audit is required on activities of RECs. The IPA shall provide a copy of this report to the participating school districts and the PED once the report has been released by the state auditor. The presentation of these funds should be in conformity with accounting principles generally accepted in the United States of America.

(b) Audits of RECs should test for compliance with PED Regulation, 6.23.3.7 NMAC through 6.23.3.12 NMAC.

(c) If applicable, any on-behalf payments for fringe benefits and salaries made by RECs for employees of school districts should be accounted for in accordance with GASB Cod. Sec. N50.135 and communicated to the employer in accordance with 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 should provide the adjusting entries to the REC to reconcile cash per the financial statements to cash per the REC accounting records. However, if cash per the REC accounting records differs from the cash amount the REC reports to PED in the monthly cash report, then the IPA should write a finding stating that the PED reports do not reconcile to the REC accounting records.

(4) School district audits must address the following issues:

(a) Audits of school districts shall test for compliance with PED Regulation 6.20.2 NMAC, Governing Budgeting and Accounting for New Mexico Public Schools and School

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Districts, 6.13.4 NMAC, The School Athletics Equity Act and the Manual of Procedures, primarily 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 the PED. This schedule will account for cash in the same categories used by the District in its monthly cash reports to the PED. Subsections D and E of 6.20.2.13 NMAC, state that “the cash basis of accounting is used for budgeting and reporting” to PED. The financial statements are prepared on the accrual basis of accounting. “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.” However, if there is some difference between the school district records and the PED report amounts, other than those explained by the adjusting entries, then the IPA should write a finding stating that the PED reports do not reconcile to the school district records.

(c) Any joint ventures or other entities created by the school districts are agencies subject to the Audit Act.

(d) Agency fund reporting: under GASBS 34 a statement of changes in fiduciary net position is required for pension trust funds, investment trust funds, and private-purpose trust funds. However, agency funds have no net position and will be excluded from this presentation (GASBS 34 Paragraph 110 as amended by GASBS 63). Therefore, it is a requirement of the state auditor that a schedule of changes in assets and liabilities - agency funds for the fiscal year be included as supplemental information in the audit report for each school district and each charter school. The schedules should show the changes (both additions and deductions) in the agency funds summarized by school or for each activity. The schedule should appear toward the end of the table of contents and requires an AU-C 725 opinion in the independent auditor’s report.

(e) Capital expenditures by the New Mexico public school facilities authority: school districts must: review capital expenditures made for repairs and building construction projects of the school district by the New Mexico public school facilities authority; determine the amount of capital expenditures that should be added to the capital assets of the school district; and account for those additions properly. The auditor should test the school district capital asset additions for proper inclusion of these expenditures.

(f) Functions of the federal fund: The school district audit reports must include individual fund financial statements and budgetary comparisons for the following functions of the general fund: operational, transportation, instructional materials and teacherage (if applicable).

(5) 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 authorized by the 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 to the 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 must be applied to determine whether a charter school is a component unit of the chartering entity (the district or PED). GASBS 14 was amended by GASBS 61. The district, the PED, the charter school and the IPA must evaluate whether the amended GASBS 14 criteria requires a charter school to be presented as a component unit of its chartering entity. If a charter school is determined to be a component unit, then the charter school must be included in the financial statements of its sponsoring school district or PED by discrete presentation or blended presentation, if the GASB 34 (as amended) criterion for blended presentation is met.

(c) The financial statements for charter schools that are determined to be component units pursuant to the criteria of the amended GASBS 14 should be presented and opined on in the following manner.

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(i) any charter school that has been determined to be a component unit should not be omitted based on materiality; all charter schools that are component units should be included in the basic financial statements (full accrual basis presentation) in one of the following manners; a separate column for each component unit presented in the government-wide statement; combining statements of component units presented as a basic financial statement after the fund financial statements; or as condensed financial statements in the notes to the basic financial statements (GASBS 34 Paragraphs 124 to 126);

(ii) when separate audited financial statements are not available for a charter school, the fund financial statements for that charter school must be presented in the primary government’s financial statements on the modified accrual basis of accounting; if applicable, combining and individual fund financial statements should also be presented for the nonmajor funds; the financial statements should be presented as supplemental information (SI) according to AAG-SLV 3.22 (latest edition);

(iii) the state auditor requires that individual fund budgetary comparison statements for all of the charter school’s funds must be included in the supplemental information section of the financial statements following the fund financial statements and the combining statements for the non-major funds to demonstrate compliance with legally adopted budgets; the budgetary comparisons must be audited and included in the auditor’s opinion.

D. Pertaining to audits of counties:

(1) Tax roll reconciliation county governments: audit reports for counties must include two supplementary schedules. 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. The second schedule titled “county treasurer’s property tax schedule” must 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. Property taxes levied in January 2015 are budgeted for the fiscal year July 1, 2015 through June 30, 2016. If the county does not have a system set up to gather and report the necessary information for the property tax schedule, a finding is required to be reported.

(2) The following is an example of the required tax roll reconciliation schedule:

STATE OF NEW MEXICO (NAME) COUNTY TAX ROLL RECONCILIATION - CHANGES IN THE COUNTY TREASURER’S PROPERTY TAXES RECEIVABLE FOR THE YEAR ENDED JUNE 30, 2016	
Property taxes receivable, beginning of year:	\$641,290
Changes to tax roll:	
Net taxes charged to treasurer for fiscal year:	4,466,602
Adjustments:	
Increases in taxes receivables:	3,066
Charge off of taxes receivables:	(6,144)
Total receivables prior to collections:	5,104,814
Collections for fiscal year ended June 30, 2016:	(4,330,993)
Property taxes receivable, end of year:	\$773,821
Property taxes receivable by years:	

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2007 – 2015	\$226,344
2016	547,477
Total taxes receivable:	\$773,821

(3) An example of the schedule titled “county treasurer’s property tax schedule may be found on the office website at www.saonm.org.

E. Pertaining to audits of colleges and universities: update to the auditor selection process:

(1) After completing the evaluation for each IPA the college or university shall submit the unsigned audit contract to HED for approval, prior to submitting the audit contract to the state auditor for approval. The unsigned audit contract is due to the state auditor on or before May 1. In the event that the due date falls on a weekend or holiday, the due date will be the next workday.

(2) Budgetary comparisons: the legal level of budgetary control per 5.3.4.10 NMAC should be disclosed in the notes to the financial statements. The state auditor requires that every college and university’s audit report include budgetary comparisons as SI. The budgetary comparisons must be audited and an auditor’s opinion must be rendered. An AU-C 725 opinion does not meet this requirement. The budgetary comparisons must show columns for: the original budget; the revised budget; actual amounts on the budgetary basis; and a variance column. The auditor must confirm the final adjusted and approved budget with the HED. The auditor must 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 budget comparisons are:

- (a) adjustments made by the institution after September 15; and
- (b) audit adjustments; if the HED budget submission does not tie to the

financial statement budget comparison, taking into account only those differences, then the auditor should write a related finding; a reconciliation of actual revenue and expense amounts on the budgetary basis to the GAAP basis financial statements should be disclosed at the bottom of the budgetary comparisons (preferred) 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 should include revenues and expenses; the HED approved the following format which must be used for the budgetary comparisons:

- (i) unrestricted and restricted all operations (schedule 1);
- (ii) beginning fund balance;
- (iii) unrestricted and restricted revenues;
- (iv) state general fund appropriations;
- (v) federal revenue sources;
- (vi) tuition and fees;
- (vii) land and permanent fund;
- (viii) endowments and private gifts;
- (ix) other;
- (x) total unrestricted & restricted revenues;
- (xi) unrestricted and restricted expenditures;
- (xii) instruction;
- (xiii) academic support;
- (xiv) student services;
- (xv) institutional support;
- (xvi) operation and maintenance of plant;
- (xvii) student social & cultural activities;
- (xviii) research;
- (xix) public service;
- (xx) internal services;
- (xxi) student aid, grants & stipends;
- (xxii) auxiliary services;
- (xxiii) intercollegiate athletics;

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- (xxiv) independent operations;
 - (xxv) capital outlay;
 - (xxvi) renewal & replacement;
 - (xxvii) retirement of indebtedness;
 - (xxviii) total unrestricted & restricted expenditures;
 - (xxix) net transfers;
 - (xxx) change in fund balance (budgetary basis) ;
 - (xxxi) ending fund balance.
- (c) unrestricted instruction & general (schedule 2);
- (i) beginning fund balance;
 - (ii) unrestricted revenues;
 - (iii) tuition;
 - (iv) miscellaneous fees;
 - (v) federal government appropriations;
 - (vi) state government appropriations;
 - (vii) local government appropriations;
 - (viii) federal government contracts/grants;
 - (ix) state government contracts/grants;
 - (x) local government contracts/grants;
 - (xi) private contracts/grants;
 - (xii) endowments;
 - (xiii) land & permanent fund;
 - (xiv) private gifts;
 - (xv) sales and services;
 - (xvi) other;
 - (xvii) total unrestricted revenues;
 - (xviii) unrestricted expenditures;
 - (xix) instruction;
 - (xx) academic support;
 - (xxi) student services;
 - (xxii) institutional support;
 - (xxiii) operation & maintenance of plant;
 - (xxiv) total unrestricted expenditures;
 - (xxv) net transfers;
 - (xxvi) change in fund balance (budgetary basis);
 - (xxvii) ending fund balance;
- (d) restricted instruction & general (schedule 3);
- (i) beginning fund balance;
 - (ii) restricted revenues;
 - (iii) tuition;
 - (iv) miscellaneous fees;
 - (v) federal government appropriations;
 - (vi) state government appropriations;
 - (vii) local government appropriations;
 - (viii) federal government contracts/grants;
 - (ix) state government contracts/grants;
 - (x) local government contracts/grants;
 - (xi) private contracts/grants;
 - (xii) endowments;
 - (xiii) land & permanent fund;
 - (xiv) private gifts;

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- (xv) sales and services;
- (xvi) other;
- (xvii) total restricted revenues;
- (xviii) restricted expenditures;
- (xix) instruction;
- (xx) academic support;
- (xxi) student services;
- (xxii) institutional support;
- (xxiii) operation & maintenance of plant;
- (xxiv) total restricted expenditures;
- (xxv) net transfers;
- (xxvi) change in fund balance (budgetary basis) ;
- (xxvii) ending fund balance.

(3) The level of planning materiality required by the state auditor follows: Institutions should present their financial statements using the business type activities (BTA) model. The level of planning materiality described in the AICPA audit and accounting guide, state and local governments, Section 4.73, must be used for the audit of these institutions. Planning materiality for component units is at the individual component unit level. If a 501(c) component unit organization had a gross annual income in excess of two hundred fifty thousand dollars (\$250,000), Section 6-5A-1, NMSA 1978, requires that entity to be audited regardless of materiality. See Paragraph (1) of Subsection A of 2.2.2.10 NMAC for more information about contracting for these required audits.

(4) Compensated absence liability should be shown as follows: The statement of net position should reflect the current portion of compensated absences under current liabilities, and the long-term portion of compensated absences under noncurrent liabilities.

(5) Component unit issues: legally separate entities that meet the criteria set forth in GASBS 14, as amended by GASBS 39 and GASBS 61, to qualify as a component unit of an educational institution must be included in the educational institution's audit report *as a discrete component unit*. An exemption must be obtained from the state auditor in order to present any component unit as blended. The same auditor must audit the component unit and the educational institution unless an exemption is obtained from the state auditor.

(a) If the college or university has no component units there should be a statement to that effect in the notes to the financial statement in the description of the reporting entity.

(b) 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.

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

(6) Management discussion and analysis (MD&A): The MD&A analysis of significant variations between original and final budget amounts and between final budget amount and actual budget results is required by this rule for colleges and universities. The analysis should include any currently known reasons for those variations that are expected to have a significant effect on future services or liquidity.

(7) Submit draft copy of financial statements to financial control division: Section 11 of Article XII of the New Mexico state constitution established the following New Mexico educational institutions:

- (a) the university of New Mexico;
- (b) nm state university;
- (c) nm highlands university;
- (d) western nm university;

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- (e) eastern nm university;
- (f) nm institute of mining and technology;
- (g) nm military institute;
- (h) nm school for the visually handicapped;
- (i) nm school for the deaf; and
- (j) northern nm college; these educational institutions should provide the

FCD with a draft copy of their financial statements excluding opinions and findings, pursuant to Paragraph (16) of Subsection A of 2.2.2.12 NMAC, and the letter dated October 3, 2008, described therein, from the state controller and the state auditor.

[2.2.2.12 NMAC, Rp, 2.2.2.12 NMAC, 3-15-16]

2.2.2.13 REVIEW OF AUDIT REPORTS AND AUDIT DOCUMENTATION:

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

B. Comprehensive reviews: Released audit reports are subject to a comprehensive report and audit documentation review by the state auditor. The IPA's audit documentation must be assembled in one complete file or one complete set of files in one location, whether the documentation is hardcopy or electronic, pursuant to AU-C 230.16. The documentation must be either all hardcopy or all electronic. The office reviews of audit and AUP working papers include the review of firm documentation of compliance with governmental auditing, accounting and financial reporting standards issued by GASB, AICPA, GAO, OMB Circular A-133 or uniform administrative requirements, cost principles, and audit requirements for federal awards, and the requirements of this rule.

C. Consequences of deficiencies: If during the course of its review of an audit report or the related audit documentation, the office finds significant deficiencies that warrant a determination that the audit was not made in a competent manner in accordance with the provisions of the contract or applicable standards, or requirements of this rule, any or all of the following action(s) may be taken;

(1) as instructed by the office, the IPA may be required to correct the deficiencies and if necessary the working papers, and reissue the audit report to the agency, and any others receiving copies;

(2) the IPA may be required to submit working papers along with the audit report to the state auditor for review by the office, prior to the release of future audit reports, for some or all audit contracts; or

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

D. Results of work paper reviews: After the review is completed, the office will issue a letter to advise the IPA about the results of the review. The IPA is required to respond in writing to all review comments when directed. If the firm disagrees with any comments, the firm shall provide references to professional standards supporting the firm's disagreement. Failure to respond will be noted during the firm profile review process.

2.2.2.13 NMAC - Rp, 2 2.2.13 NMAC, 3-15-16]

2.2.2.14 CONTINUING PROFESSIONAL EDUCATION AND PEER REVIEW REQUIREMENTS:

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A. Continuing professional education: U.S. GAO Government Auditing Standards, 2011 Revision (GAGAS), Section 3.76 states “auditors performing work in accordance with GAGAS, including planning, directing, performing audit procedures, or reporting on an audit in accordance with GAGAS, should maintain their professional competence through CPE. Therefore, each auditor performing work in accordance with GAGAS should complete, every two years, at least 24 hours of CPE that directly relates to government auditing, the government environment, or the specific or unique environment in which the audited entity operates. Auditors who are involved in any amount of planning, directing, or reporting on GAGAS audits and auditors who are not involved in those activities but charge twenty percent or more of their time annually to GAGAS audits should also obtain at least an additional 56 hours of CPE (for a total of 80 hours of CPE in every two-year period) that enhances the auditor’s professional proficiency to perform audits. Auditors required to take the total 80 hours of CPE should complete at least 20 hours of CPE in each year of the two-year period. Auditors hired or initially assigned to GAGAS audits after the beginning of an audit organization’s two-year CPE period should complete a prorated number of CPE hours.” The GAO issued *government auditing standards: Guidance on GAGAS requirements for continuing professional education, GAO-05-568G, April 2005*. It provides helpful guidance to auditors and audit organizations regarding the implementation of the GAGAS CPE requirements. The guide is available at www.gao.gov/govaud.

B. Peer review requirements: GAGAS Section 3.82 states “each audit organization performing audits in accordance with GAGAS must: establish and maintain a system of quality control that is designed to provide the audit organization with reasonable assurance that the organization and its personnel comply with professional standards and applicable legal and regulatory requirements; and have an external peer review performed by reviewers independent of the audit organization being reviewed at least once every three years.” Required elements of each audit organization’s system of quality control are described at GAGAS 3.83 to 3.96. Section 3.96 states “the audit organization should obtain an external peer review at least once every three years that is sufficient in scope to provide a reasonable basis for determining whether, for the period under review, the reviewed audit organization’s system of quality control was suitably designed and whether the audit organization is complying with its quality control system in order to provide the audit organization with reasonable assurance of conforming with applicable professional standards.”

(1) Per AICPA PR Section 100 standards for performing and reporting on peer reviews, a firm’s due date for its initial peer review is 18 months from the date the firm enrolled in the peer review program or should have enrolled, whichever is earlier. A firm’s subsequent peer review is due three years and six months from the previous peer review year end.

(2) If the firm is unable to submit its latest current peer review documentation by the date the annual firm profile review process is completed, the firm will be put on “conditional approval” status by the office pursuant to Subsection D of 2.2.2.8 NMAC.

(3) The state auditor requires the location of the external quality control review to be the office of the firm under review, regardless of whether the firm reviewed is a sole practitioner and regardless of the number of firm employees. External quality control reviews performed at a location other than the office of the firm under review will not be accepted by the state auditor.

(4) IPAs who perform government audits are expected to maintain professional libraries, which may include electronic resources, including current editions of the publications and standards noted at Subsections C and D of 2.2.2.10 NMAC. The PPC audit guides published by Thomson Reuters or similar authors’ practice aides are not considered to be authoritative guidance.

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

(a) proof that the firm your peer reviewer is associated with is a firm that received a peer review rating of “pass”;

(b) the peer review report for the auditor’s firm;

(c) if applicable, the detailed description of the findings, conclusions and recommendations related to deficiencies or significant deficiencies required by (GAGAS 3.103);

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(d) auditor's response to deficiencies or significant deficiencies (if applicable);

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

(f) a list of the governmental audits reviewed during the peer review; the office assumes that at least one of these will be a New Mexico governmental audit.

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

(7) During the procurement process audit firms shall provide a copy of their most recent external peer review report to the agency upon submitting a bid proposal or offer and any subsequent peer review reports received during the period of the contract.

(8) The peer review should meet the requirements of GAGAS 3.96 to 3.107.

(9) The New Mexico public accountancy board's substantial equivalency provision has been replaced with mobility pursuant to Section 61-28B-13 NMSA 1978. If the CPA is performing any type of attest work, his firm must apply for a firm permit.

(10) The reviewer should 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 office.

C. State auditor quality control reviews: The state auditor performs its own quality control review of IPA audit reports and working papers. 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 will take into consideration the fact that AICPA peer reviews are performed on a risk-based or key-element approach looking for systemic problems, while the state auditor reviews are engagement-specific reviews.

[2.2.2.14 NMAC - Rp, 2.2.2.14 NMAC, 3-15-16]

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

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

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

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

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

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audit, attestation engagement, forensic audit or other existing or potential engagement regarding the financial affairs or transactions of an agency.

B. Special audit or attestation examinations, performance audits and forensic audits:

(1) Designation: Pursuant to Section 12-6-3 NMSA 1978, in addition to the annual audit, the state auditor may cause the financial affairs and transactions of an agency to be audited in whole or in part. Accordingly, the state auditor may designate an agency for special audit or attestation, performance audit or forensic audit 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, the term “special audit or attestation engagement, performance audit or forensic audit” includes, without limitation, agreed-upon procedures and consulting engagements that address financial fraud, waste or abuse in government. The state auditor shall inform the agency of the designation by sending the agency a notification letter. The state auditor may specify the audit subject matter, the scope and any procedures required, the AICPA professional standards that apply, and for a performance audit, performance aspects to be included and the potential findings and reporting elements that the auditors expect to develop. Pursuant to Section 200.503 of Uniform Guidance for Federal Awards, if a single audit was previously performed, the special audit, attestation engagement, performance audit or forensic audit must 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 office.

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

(3) Who performs the engagement: The state auditor may perform the special audit or attestation engagement, performance audit or forensic audit, alone or with other professionals selected by the state auditor. Alternatively, the state auditor may require the audit or attestation engagement to be performed by an IPA or a team that may be comprised of any of the following: independent public accountants; individuals with master’s degrees or doctorates in a relevant field such as business, public administration, public policy, finance, 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, and 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 in accordance with the Uniform Guidance for Federal Awards (if applicable), Procurement Code, Chapter 13 Article 1, or equivalent home rule procurement provisions when selecting an IPA or team to perform the engagement;

(c) evaluate all competitive sealed proposals or quotations received by using an evaluation process, preferably executed by a selection committee, as described in Subsection H of 2.2.2.8 NMAC; and

(d) after completing the evaluations for each professional and making the professional selection, each agency shall submit the following information to the state auditor by the due date specified by the state auditor:

(i) a completed recommendation form for special audits, or attestation engagements, performance audits or forensic audits (the form) provided at www.osanm.org, which the agency shall print on agency letterhead; and

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(ii) a completed audit contract form including the contract fee, start and completion date, and the specific scope of services to be performed, provided at www.osanm.org, with all required signatures on the contract.

(e) recommendation forms and contracts that are submitted to the office with errors or omissions will be rejected by the state auditor; the state auditor will return the rejected form and contract to the agency with a checklist indicating the reason(s) for the rejection;

(f) in the event the agency's recommendation is not approved by the state auditor, the state auditor will promptly communicate the decision, including the reason(s) for disapproval, to the agency, at which time the agency shall promptly submit a different recommendation; this process will 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 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 may set the meeting in a timely manner with consideration given to the agency's circumstances.

(g) any contract amendments will be processed in accordance with Subsection S of 2.2.2.8 NMAC.

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

(5) Entrance, progress and exit conferences: The IPA or other professional will 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 state auditor has the authority to notify the agency or IPA or other professional that the state auditor should 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 agency must invite the state auditor or his designee to attend all such conferences. The state auditor may also require the IPA or other professional to submit its audit plan to the state auditor for review and approval.

(6) Required reporting: All reports for special audit, attestation, performance audit, or forensic audit 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 or for attestation engagements) should report as findings any fraud, illegal acts, non-compliance or internal control deficiencies, consistent with Section 12-6-5 NMSA 1978. The findings should include the following elements:

(a) the condition or description of the situation that exists, including the extent of the condition, like the number of instances the condition was found out of the number of samples tested and the amount of dollars involved compared to the amount of dollars and for repeat findings, include here, management's progress towards implementing the prior year planned corrective actions (if applicable);

(b) the criteria of the policy or procedure, law, regulation, ordinance, contract, or grant agreement excerpt that illustrates what is expected;

(c) the cause of the condition, if it can be determined;

(d) the effect or impact of the condition;

(e) the IPA or other professional(s)' recommendation addressing each condition and cause;

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(f) agency response (agency's comments about the finding including a specific planned corrective action with a timeline and designation of what employee position(s) are responsible for meeting the deadlines in the timeline); upon completion of the report, the IPA or other professional shall deliver the organized and bound report to the state auditor with a copy of any signed management representation letter.

(7) Reports: The state auditor will review reports of any special audit or attestation engagement, performance audit or forensic audit made pursuant to this section for compliance with the professional services contract and this 2.2.2.15 NMAC; upon completion of the report, the IPA or other professional shall deliver the organized and bound report to the state auditor; unfinished or excessively deficient reports will be rejected by the state auditor; the firm should submit an electronic version of the corrected rejected report for state auditor review; the name of the electronic file should be "corrected rejected report" followed by the agency name and fiscal year; the IPA or other professional is required to respond to all review comments as directed by the state auditor.

(8) Report release: After its review of the report for compliance with the professional services contract, the state auditor will authorize the IPA to print and submit the final report; the required number of hardcopies specified in the professional services contract, a completed electronic excel version of the summary of findings form available at www.saonm.org and an electronic version of the report, in the PDF format described at Paragraph (3) of Subsection C of 2.2.2.9 NMAC, all must be delivered to the state auditor within five business days. The state auditor will not release the report until the electronic version of the report and the *summary of findings* form are received by the state auditor. The state auditor will provide the agency with a letter authorizing final payment to the IPA and the release of the report pursuant to Section 12-6-5 NMSA 1978. Agency and local public body personnel shall not release information to the public relating to the special audit, performance audit or attestation engagement until the report is released and has become a public record pursuant to Section 12-6-5 NMSA 1978. Except for the exception under Paragraph (10) of 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.

(9) Disclosure by the state auditor: The state auditor shall disclose special audit, performance audit, attestation engagement, and forensic audit documentation that is confidential under Paragraphs (2) and (3) of Subsection A of 2.2.2.15 NMAC, only if and when required by Section 12-6-6 NMSA 1978.

(10) Disclosure by professionals: The IPA or other professional shall not disclose 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 team may result in legal action by the state auditor, or in the case of an IPA, being restricted pursuant to Subsection F and G of 2.2.2.8 NMAC.

(11) Payment: Progress payments up to (but not including) ninety percent of the contract amount do not require state auditor approval and may be made by the agency if the agency monitors the progress of the services procured. If requested by the state auditor, the agency shall provide a copy of the approved progress billing(s). Final payments of ninety percent and above may be made by the agency only after the state auditor has stated in a letter to the agency that the report has been released by the state auditor.

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

(1) Applicability: With the exception of agencies that are authorized by statute to conduct performance audits and forensic audits, this section applies to all instances in which an agency enters into a professional services contract for a special audit or attestation engagement, performance audit, or forensic audit relating to financial fraud, waste or abuse, but the agency has not been designated by the state auditor for the engagement pursuant to Subsection B of 2.2.2.15 NMAC. For purposes of this

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rule, the term “special audit or attestation engagement, performance audit or forensic audit” includes, without limitation, agreed-upon procedures and consulting 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 or attestation engagement, performance audit, or forensic audit regarding the financial affairs and transactions of an agency and relating to financial fraud, waste or abuse in government without the prior written approval of the state auditor. The proposed professional services contract must 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 must include the contract fee, start and completion date, and the specific scope of services to be performed, and must follow any template that the state auditor may provide.

(3) Applicability of other rules: The provisions outlined in Paragraphs (4) through (11) of Subsection B of 2.2.2.15 NMAC apply to agency-initiated special audits and attestation engagements, performance audits and forensic audits.
[2.2.2.15 NMAC - Rp, 2.2.2.15 NMAC, 3-15-16]

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

A. Annual revenue determines type of financial reporting: Pursuant to Subsection B of 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 office. Local public bodies are mutual domestic water consumers associations, land grants, incorporated municipalities, and special districts. The annual revenue of a local public body shall be calculated on a cash basis, excluding capital outlay funds, federal and private grants.

B. Determination of revenue and services: Annually, the state auditor shall provide local public bodies written authorization to proceed with obtaining 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:

(1) if a local public body’s annual revenue is less than \$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 and filing quarterly reports and budgets for approval to the local government division of the department of finance and administration and from submitting a financial report to the state auditor, except as otherwise provided in Subsection C of 2.2.2.16 NMAC;

(2) if a local public body’s annual revenue is \$10,000 or more but less than fifty thousand dollars (\$50,000), then the local public body shall comply with the requirements of Section 6-6-3 NMSA 1978; and is exempt from any financial reporting to the state auditor, except as otherwise provided in Subsection C of 2.2.2.16 NMAC;

(3) if a local public body’s annual revenue is less than fifty thousand dollars (fifty thousand dollars (\$50,000)), and the local public body expended at least fifty percent of, or the remainder of, a single capital outlay award, then the local public body shall procure the services of an IPA for the performance of a tier 3 agreed upon procedures engagement in accordance with the Tier 3 Agreed Upon Procedures checklist on the state auditor’s website;

(4) if a local public body’s annual revenue is fifty thousand dollars (\$50,000) or more, but less than \$250,000, then the local public body shall procure the services of an IPA for the

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performance of a tier 4 agreed upon procedures engagement in accordance with the tier 4 agreed upon procedures checklist on the state auditor's website;

(5) if a local public body's annual revenue is fifty thousand dollars (\$50,000) or greater, but less than two hundred fifty thousand dollars (\$250,000) and the local public body expended any capital outlay funds, then the local public body shall procure the services of an IPA for the performance of a tier 5 agreed upon procedures engagement in accordance with the tier 5 agreed upon procedures checklist on the state auditor's website;

(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 6 agreed upon procedures engagement in accordance with the tier 6 agreed upon procedures checklist on the state auditor's website;

(7) if a local public body's annual revenue is five hundred thousand dollars (\$500,000) or more, the 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 2.2.2 NMAC;

(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 must procure a single audit in accordance with 2.2.2.8 NMAC.

C. Exemption from financial reporting: A local public body that is exempt from financial reporting to the state auditor pursuant to Paragraphs (1) and (2) of Subsection B of 2.2.2.16 NMAC shall submit written certification to the local government division and the state auditor. The certification shall be provided on the form made by the state auditor and available on the state auditor's website at www.saonm.org. 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.

D. Procurement of IPA services: A local public body required to perform an agreed-upon procedures engagement shall procure the services of an IPA in accordance with 2.2.2.8 NMAC. A local public body is strongly encouraged to select an IPA on the state auditor's list of audit firms approved to perform audits of New Mexico government agencies. However, a local public body may select an IPA who has submitted the following firm information and been approved by the office pursuant to applicable procedures described at Subsections B through F of 2.2.2.8 NMAC:

(1) a New Mexico firm permit to practice;
(2) current liability insurance; and
(3) a current peer review (if applicable), with a rating of at least "pass with deficiencies."

E. Requirements of the IPA selected to perform the agreed-upon procedures:

(1) The IPA will provide the local public body with a dated engagement letter during the planning stages of the engagement, describing the services to be provided. See Paragraph (5) of Subsection S of 2.2.2.8 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 will hold an entrance conference and an exit conference with the local public body unless the IPA has submitted a written request to the office for an exemption from this requirement and has obtained written approval of the exemption from the office. Unless the cost of the AUP is \$5,000 (excluding GRT) or less, the exit conference must be held in person; a telephone or webcam exit conference will not meet this requirement. The office has the authority to notify the agency or IPA that the state auditor should 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 must invite the

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state auditor or his designee to attend all such conferences no later than 72 hours before the proposed conference or meeting.

(4) The report should be submitted to the office for review. After the report has been reviewed by the office, an electronic excel version of the summary of findings form (available at www.saonm.org) must be submitted to the office along with the final report. Once the 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 or has been waived by the local public body, the agreed-upon procedures report shall be presented by the IPA, to a quorum of the governing authority of the local public body at a meeting held in accordance with the Open Meetings Act, if applicable.

F. Progress payments:

(1) Progress payments up to ninety 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 office a copy of the approved progress billing(s).

(2) Final payments from ninety one percent to one hundred percent may be made by the local public body only after the state auditor has stated in a letter to the local public body that the agreed-upon procedures report has been released by the state auditor and the engagement and management representation letter have been received by the state auditor.

G. Report due dates, notification letters and confidentiality:

(1) For local public bodies with a June 30 fiscal year-end, the report or certification due date is December 15. Local public bodies with a fiscal year end other than June 30 must submit the agreed-upon procedures report or certification no later than five months after the fiscal year-end. An organized bound hard copy of the report should be submitted. Reports submitted via fax or email will 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 office is closed due to inclement weather, the report is due the following business day by 5:00 p.m. If the report is mailed to the state auditor, it should 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 should be postmarked by the following workday. The state auditor will grant no extensions of time to the established regulatory due dates.

(2) As soon as the auditor becomes aware that circumstances exist that will make the local public body's agreed-upon procedures report be submitted after the applicable due date shown in Paragraph (1) of Subsection G of 2.2.2.16 NMAC above, the auditor shall notify the state auditor and oversight agency of the situation in writing. This notification shall consist of a letter with official signatures, not an email. However, a scanned version of the official letter sent via email that contains the required signatures is acceptable. There must be a separate notification for each late agreed-upon procedures report. The notification must 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 should send a revised notification letter.* In the event the contract was signed after the report due date, the notification letter must still be submitted to the office explaining the reason the agreed-upon procedures report will be submitted after the report due date. A copy of the letter must be sent to the LGD, if LGD oversees the local public body. The late report notification letter is not required if the report was submitted to the Office for review by the deadline, and then rejected by the office, making the report late when resubmitted.

(3) Local public body personnel shall not release information to the public relating to the agreed-upon procedures 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 agreed-upon procedures 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 agreed-upon procedures engagement.

H. Findings: All agreed upon procedures engagements should report as findings any fraud, illegal acts, non-compliance or internal control deficiencies, consistent with Section 12-6-5 NMSA 1978.

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The findings should include the content listed at Subparagraph (c) of Paragraph (3) of Subsection I of 2.2.2.10 NMAC.

I. Review of agreed-upon procedures reports and related workpapers: Agreed-upon procedures reports will be reviewed by the office for compliance with the professional services contract. Unfinished or excessively deficient reports will not be considered received. Such reports will be returned to the firm and a copy of the rejection letter will be sent to the local public body. If the office rejects and returns a substandard agreed upon procedures report to the firm, the report will be considered late if the revised report is not submitted by the due date, and the firm must include a finding for non-compliance with the due date. The firm should submit an electronic version of the corrected rejected report for office review. The name of the electronic file should be “corrected rejected report” followed by the agency name and fiscal year. The office encourages early submission of reports to avoid findings for late reports. After its review of the agreed-upon procedures report for compliance with the professional services contract, the office will authorize the IPA to print and submit the final report; the required number of hardcopies specified in the professional services contract, an electronic excel version of the findings summary form and an electronic version of the agreed upon procedures report, in PDF format described at Paragraph (3) of Subsection C of 2.2.2.9 NMAC, all must be delivered to the office within five business days. The office will not release the agreed-upon procedures report until the electronic version of the report is received by the office. The office will provide the local public body with a letter authorizing the release of the report after the required five day waiting period, and final payment to the IPA. Released reports may be selected by the office for comprehensive report and **workpaper** reviews. After a comprehensive review is completed, the office will issue a letter to advise the IPA about the results of the review. The IPA is required to respond to all review comments as directed. If during the course of its review, the office finds significant deficiencies that warrant a determination that the engagement was not performed in accordance with the 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) as instructed by the office, the IPA may be required to correct the working papers and reissue the agreed upon procedures report to the agency, and any others receiving copies;
- (2) the IPA’s future engagements may be limited in number pursuant to Subsections F and G of 2.2.2.8 NMAC;
- (3) the IPA may be required to submit working papers along with the agreed-upon procedures report to the state auditor for review by the office, prior to the release of future agreed upon procedures reports, for some or all contracts; or
- (4) the IPA may be referred to the New Mexico public accountancy board for possible licensure action.

J. IPA Independence: IPA’s that perform agreed-upon procedure engagements under the tiered System must maintain independence in mind and appearance, in all matters relating to the engagement.

(1) An IPA who performs the local public body’s annual agreed-upon procedures engagement shall not enter into any special audit or non-audit service contract with that local public body without the prior written approval of the state auditor. To obtain this approval, the IPA should follow the requirements set forth in Subsection N of 2.2.2.8 NMAC.

(2) Except as provided in Paragraph (2) of Subsection C of 2.2.2.15 NMAC, a local public body and an IPA who does not perform that local public body’s annual financial audit shall submit a copy to the state auditor of each professional services contract entered into between the local public body and the IPA for a special audit, agreed- upon procedures or any other non-audit services. The contract shall not require approval by the state auditor, but shall be submitted to the state auditor within 30 days of execution.

[2.2.2.16 NMAC, Rp, 2.2.2.16, 3-15-16]

HISTORY of 2.2.2 NMAC:

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Pre-NMAC Regulatory Filing History: The material in this part was derived from that previously filed with the State Records Center and Archives under SA Rule No. 71-1, Regulations of State Auditor Relating to Audit Contracts with Independent Auditors by State Agencies, filed 5-14-71; SA Rule No. 71-2, Regulations of State Auditor for Audits by Independent Auditors, filed 5-27-71; SA Rule No. 72-1, Regulations of State Auditor Relating to Audit Contracts With Independent Auditors by Agencies of the State of New Mexico, filed 6-1-72; SA Rule No. 72-2, Regulations of State Auditor for Audits by Independent Auditors, filed 6-1-72; SA Rule No. 74-1, Regulations of State Auditor Relating to Reporting Statutory Violations, filed 2-28-74; SA Rule No. 74-2, Rotation of Assignments, filed 2-28-74; SA No. 78-1, Regulations Governing the Auditing of New Mexico Governmental Agencies, filed 11-3-78; Amendment No. 1 to SA Rule 78-1, Regulations Governing the Auditing of New Mexico Governmental Agencies, filed 5-28-80; SA Rule No. 82-1, Regulation Governing the Auditing of New Mexico Governmental Agencies, filed 12-17-82; SA Rule No. 84-1, Regulations Governing the Auditing of Agencies of the State of New Mexico, filed 4-10-84; SA Rule No. 85-1, Regulations Governing the Auditing of Agencies of the State of New Mexico, filed 1-28-85; SA Rule No. 85-3, Regulation for State Agencies Concerning NCGA Statement No. 4 - Accounting and Financial Reporting Principles for Claims and Judgements and Compensated Absences, filed 4-16-80; SA Rule No. 85-4, Regulations Governing the Auditing of Housing Authorities of the State of New Mexico, filed 6-12-85; SA Rule No. 85-5, Regulations Pertaining to Single Audits of State Agencies and Local Public Bodies, filed 6-17-85; SA Rule No. 85-6, Audits of Grants to Subrecipients, filed 6-17-85; SA Rule 86-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 1-20-86; SA Rule No. 86-2, Regulation Governing Violations of Criminal Statutes in Connection with Financial Affairs, filed 3-20-86; SA Rule No. 86-3, Professional Services Contracts, filed 7-9-86; SA Rule 87-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2-13-87; SA Rule 87-2, Approval of Audit Contracts, filed 4-2-87; SA Rule 87-3, Audit Requirements for Deferred Compensation, Retirement Plans, Budget and Public Money for the State of New Mexico, filed 8-14-87; SA Rule 88-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2-10-88; SA Rule 89-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3-10-89; SA Rule 90-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3-1-90; SA Rule 90-3, Auditor's Responsibilities Related to Fees Collected on Convictions Relating to Intoxicating Liquor and Controlled Substances, filed 5-7-90; SA Rule 91-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3-13-91; SA Rule 92-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3-6-92; SA Rule 93-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2-25-93; SA Rule 94-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2-25-94; Amendment 1 to SA Rule 94-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 5-16-94; SA Rule 95-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3-16-95; and 2 NMAC 2.2, Requirements for Contracting and Conducting Audits of Agencies, filed 4-2-96.

History of Repealed Material:

2 NMAC 2.2, Requirements for Contracting and Conducting Audits of Entities - Repealed, 3-30-01.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities -Repealed, 3-29-02.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 4-30-03.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 3-31-04.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 5-13-05.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 3-16-06.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 4-16-07.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 4-15-08.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 2-27-09.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 2-12-10.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 2-28-11.
2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 2-15-12.

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- 2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 2-28-13.
- 2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 2-28-14.
- 2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 3-16-15.
- 2.2.2 NMAC Requirements for Contracting and Conducting Audits of Entities - Repealed, 3-15-16.