

STATE OF NEW MEXICO



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STATE AUDITOR

May 11, 2023

To: New Mexico Counties and New Mexico Municipal League

Attn: County/City Elected Officials, County/City Managers, Municipal Treasurers, and Finance Directors/Chief Financial Officers:

Re: Alert: Federal Deposit Insurance Corporation Official Custodians and Authorized Signatories on Bank Accounts and Checks

(Sent via e-mail)

Recent high profile bank failures have raised serious concerns about the need to safeguard cash in banks when balances are greater than the \$250,000 insured by the Federal Deposit Insurance Corporation ("FDIC"). New Mexico law requires collateralization to safeguard deposits; however, it has come to our attention that collateralization laws and FDIC guidance are not consistently followed.

The New Mexico State Treasurer is the fiduciary responsible for managing, investing, and collateralizing state funds. The New Mexico State Auditor has the power, duty and authority to examine and pass upon activities of officers and agencies who, by law, receive and expend public money. Therefore, in each of our respective capacities, we are issuing the following Alert and providing guidance on issues pertaining to collateralization and authorized signatures on bank accounts and checks for public funds.

State law requires agencies to institute policies and internal procedures that comply with statutory provisions governing signatures on bank accounts and checks. For municipalities, the municipal treasurer must be the signatory on all bank accounts with public funds, as provided by NMSA 1978, Section 3-37-3. Similarly, payments must be made upon a warrant signed by both the municipal treasurer and either the mayor or the mayor's authorized representative, pursuant to NMSA 1978, Section 3-37-5. For counties, the county treasurer must be the signer on all bank accounts with county funds, and checks "must be signed by the chairman of the board of county commissioners or his designee and the county treasurer," as provided by NMSA 1978, Section 4-45-4. Where the chair of a county commission appoints a designee, the State Treasurer recommends that the individual appointed as the designee be an elected official of the county.

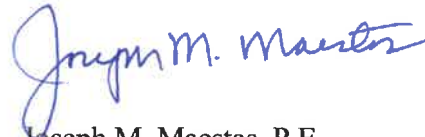
This issue is especially consequential with respect to FDIC insurance, because all bank accounts with balances above the FDIC insurance limit of \$250,000 must be collateralized consistent with state law. In recent months, it appears that some agencies bypassed these collateral requirements by adding multiple employees or elected officials to bank accounts to secure \$250,000 of FDIC insurance for each account signer. This practice is not consistent with state or federal law. For municipalities, plenary authority over municipal funds belongs to the municipal treasurer, pursuant to NMSA 1978, Section 3-37-3, who is the only official custodian unless otherwise specifically provided by municipal ordinance. Similarly, plenary authority over county funds belongs to the county treasurer, who is the only official custodian of county funds pursuant to NMSA 1978, Section 4-43-2 and NMSA 1978, Section 6-10-8.

We trust that this Alert will direct attention to the importance of the underlying issue—safeguarding public funds. Additionally, we anticipate clarification of these issues can further assist agencies and banks in reviewing and revising their policies and internal procedures to ensure compliance with their fiduciary duties. We look forward to working collaboratively with counties, municipalities, and banks to serve New Mexico.

Respectfully,



Laura M. Montoya
New Mexico State Treasurer



Joseph M. Maestas, P.E.
New Mexico State Auditor