NOTICE OF RULEMAKING

The Department of Finance and Administration, Local Government Division, has scheduled a public hearing for the proposed amendment of New Mexico Administrative Code (NMAC) rule 2.2.3, *Budget Certification of Local Public Bodies.* The hearing will take public comment on the proposed amendment to 2.2.3 NMAC. 2.2.3 NMAC is issued by the Department of Finance and Administration, Local Government Division, under Sections 6-6-1 through 6-6-19 NMSA 1978, and has not been amended since 2008.

Substantively, the Department proposes to amend the current rule to update the statutory authority and objective; add and revise definitions; codify due dates for budgets, periodic financial reports, and budget adjustment requests; establish minimum cash balance reserves for county and municipal funds; add standards for compliance with grants administered by the local government division; and establish conditional budget certification, corrective action, and noncompliance procedures that apply when a local public body fails to submit required budgets or periodic financial reports, is in financial distress, or does not comply with a grant. Sections 2.2.3.3, 2.2.3.6, 2.2.3.7, 2.2.3.8, 2.2.3.9, 2.2.3.10, 2.2.3.11, 2.2.3.12, 2.2.3.13, 2.2.3.14, and 2.2.3.15 NMAC are being substantively amended, which includes renumbering and amending the former Section 2.2.3.9 NMAC as Section 2.2.3.14 NMAC.

Notice Date: 11/17/2026
Hearing Date: 12/18/2026
Adoption Date: Proposed as December 18, 2026
Effective Date: Proposed as January 13, 2027
Technical Citations: 2.2.3 NMAC

The Department is proposing the following substantive amendments to 2.2.3 NMAC as follows:

2.2.3.3 STATUTORY AUTHORITY: Sections 6-6-1 through 6-6-19 NMSA 1978, Section 7-1-6.15 NMSA 1978, Subsection E of [~~and~~]Section 9-6-5 NMSA 1978, Section 9-6-5.2 NMSA 1978, and Subsection D of Section 12-6-3 NMSA 1978.

2.2.3.6 OBJECTIVE: 2.2.3 NMAC codifies required budgetary and financial reporting by local public bodies to the local government division supported by timely audits as of the previous [~~fiscal~~]reporting year submitted to the state auditor's office and the local government division. The intended result is to promote submission of budgets and reports to the local government division by local public bodies with documentation that provides assurance that the financial statements and position of the local public body have been audited in accordance with requirements of the New Mexico state auditor found in 2.2.2.1 through 2.2.2.14 NMAC, the requirements for contracting and conducting audits of agencies, ("the audit rule"). The purpose of coordinating the submission of audits timely from the previous [~~fiscal~~]reporting year with the budget certification process is two-fold: 1) to allow for corroboration of items in the previous [~~fiscal~~]reporting year audit with the budget and financial reports submitted to the local government division, and 2) to require correspondence and other documentation that can be maintained in a record for reference by government officials and the public. 2.2.3 NMAC also establishes due dates for budgets, periodic financial reports and budget adjustment requests, minimum cash balance reserves, standards for compliance with grants administered by the local government division, and the conditional budget certification and corrective action that apply when a local public body fails to submit required budgets or periodic financial reports, when it is in financial distress, or when it does not comply with a grant administered by the local government division.

2.2.3.7 DEFINITIONS:

A. "**Account**" means a double entry bookkeeping of assets, liabilities, income and expenses with debit and credit entries on ledger pages or other media which are posted to record a change(s) in value.

B. "**Anchor quarter**" means the periodic financial report for the last quarter of the local public body's prior reporting year.

C. "**Catch-up package**" means the anchor quarter report, every periodic financial report for the current reporting year that is due as of the date of the local government division's notice under 2.2.3.9 NMAC, and the current reporting year budget if it has not been submitted.

[~~B~~]D. "**Conditional budget certification**" means the certification of the budget of a local public body but with specified conditions requiring compliance by the local public body in order to receive budget certification

and means that the local public body is operating without final budget certification, as defined by Subsection [~~E~~] I of 2.2.3.7 NMAC.

E. "**Corrective action plan**" means a written plan, approved by the governing body of the local public body, that states the actions the local public body will take, the deadlines for those actions and the reports it will submit to the local government division.

[~~C~~]F. "**Deficit**" means any fund where its budget or financial reports reflect more expenditures than revenues and cash balances available to legally pay for them.

[~~D~~]G. "**Emergency**" means a natural or man made event that poses an immediate danger or threat to public health, welfare and safety.

[~~E~~]H. "**Extenuating circumstances**" means documented situations, conditions or events that hinder or delay a local public body from complying with the local government division's requirements and timelines for submitting budgets, financial reports and audits.

[~~F~~]I. "**Final budget certification**" means budget approval by a local government division official in accordance with Section 6-6-2 NMSA 1978.

J. "**Financial distress**" means any of the following, as shown in a periodic financial report, budget, audit or other information available to the local government division: (1) a deficit; (2) a negative cash balance in any fund; (3) cash in a county general fund, county road fund or municipal general fund below the reserve required by 2.2.3.11 NMAC; (4) a going-concern opinion in the most recent audit; (5) overexpenditure; (6) a required annual audit that has not been submitted to the state auditor by its due date; or (7) a missed quarterly report that has not been submitted. The local government division may also find financial distress based on a sustained revenue shortfall, a declining cash position, recurring interfund borrowing or general fund subsidies to enterprise funds, considering the local public body's specific circumstances. The factors in the preceding sentence are considerations and do not establish fixed numerical thresholds.

[~~G~~]K. "**Fund**" means a group of related accounts that are self-balancing within their group as defined by the government accounting standards board (GASB). A fund is not an account.

L. "**Governing body**" means the board, council, commission or other body that controls the local public body.

[~~H~~]M. "**Local government division**" is the division of the state of New Mexico department of finance and administration with budgetary and fiscal oversight responsibilities and authority over local public bodies.

[~~I~~]N. "**Local government division official**" means any employee or public officer of the local government division of the New Mexico department of finance and administration.

[~~J~~]O. "**Local public body**" means every political subdivision of the state which expends public money from whatever source derived, including but not limited to any county, incorporated municipality, or special district, land grants registered with the New Mexico secretary of state's office. Also under the definition are mutual domestic water associations, soil and water conservation districts, water and sanitation districts, watersheds, draws, medical clinics, hospitals, hospital districts, regional transportation districts, flood control authorities, natural gas associations, public improvement districts, and regional housing authority districts if required by the audit rule.

P. "**Missed quarterly report**" means a periodic financial report required by Subsection F of Section 6-6-2 NMSA 1978 that is not submitted to the local government division by its due date. A report covered by an extension granted under 2.2.3.15 NMAC is not a missed quarterly report until the extension expires.

Q. "**Overexpenditure**" means fund-level expenditures in a periodic financial report that exceed the budget authority certified by the local government division, including approved budget adjustments.

R. "**Reporting year**" means the fiscal year of a local public body, which begins July 1 and ends June 30. A local public body that reports on a calendar-year basis for fiscal year 2027 shall begin reporting on the fiscal year with fiscal year 2028, which begins July 1, 2027.

2.2.3.8 UNTIMELY ANNUAL AUDITS AND BUDGET CERTIFICATION:

A. Pursuant to Section 6-6-2 NMSA 1978, budgets shall be submitted by the local public body to the local government division. Receipt of the most current audit(s) that were required to be conducted and submitted for review per the New Mexico state auditor's required report due dates for the previous reporting year(s) shall be confirmed by the local government division. The local government division, by letter to the local public body, shall inform the governing body of the local public body and other state public officers, elected and appointed, of the need for corrective action, in accordance with Subsection E of 2.2.3.8 NMAC by the local public body when previous reporting year audit(s) have not been submitted. During the corrective action process, the local government division may grant conditional budget certification to the local public body.

B. The local government division shall identify and report to state public officers a list of local public bodies that have failed to contract with an independent public auditor for its annual audit. The identification shall include reasons why the local public body has failed to obtain an audit contract. The identification shall also report on whether or not a line item of the amount in the preliminary and final executed budgets has been included for the cost of the annual audit of the local public body.

C. When the cause of the delay is due to the independent public auditor's inability to complete the audit, the local public body will communicate this in writing to the local government division and to the state auditor.

D. When the cause of the delay is due to the inability of the local public body to make progress payments on the contract between the local public body and the independent public auditor, the local public body shall communicate this by letter to the local government division and to the state auditor. The local public body shall explain why progress payments have not been made, when they will be made and whether a shortage of funds exists.

E. Any necessary corrective action shall begin with a meeting and continue with follow-up meetings if needed, between officials of the local public body and representatives of the local government division to consider any extenuating circumstances. The meeting(s) shall address the extenuating circumstances, including but not limited to, the documented reason(s) why the required annual audit has not been conducted or completed. [~~A plan for corrective actions shall be developed and agreed to in writing by officials of the local public body, the local government division and the state auditor's office, and signed by all the parties. The local public body will report monthly to the local government division and to the state auditor's office on the progress of the corrective action plan, until the required annual audit is completed and the local public body receives budget certification or conditional budget certification if there are other issues or deficits in the budget which may necessitate conditional budget certification~~.] A corrective action plan shall be developed by the local public body and the local government division. The governing body of the local public body shall approve the corrective action plan by vote at a public meeting within thirty days after the local government division's written notice requiring the plan, unless extended under 2.2.3.15 NMAC. The local government division shall inform the state auditor, each funding entity of the local public body, the members of the legislature whose districts include the area served by the local public body, and the governing body of the local public body when the governing body approves a corrective action plan under this section and when the plan is released. Notice to the state auditor is provided in accordance with Subsection D of Section 12-6-3 NMSA 1978. The local public body will report monthly to the local government division on the progress of the corrective action plan, until the required annual audit is completed and the local public body receives budget certification or conditional budget certification if there are other issues or deficits in the budget which may necessitate conditional budget certification.

F. The local public body shall communicate in writing to the local government division and to the state auditor when it has completed its required audit(s) and the local government division shall certify the local public body's interim and final budgets upon confirming, through the state auditor's online audit reporting system or written confirmation from the state auditor's office, that the required audit has been submitted to the state auditor's office for review and publication, unless there are other issues or deficits in the budget which may necessitate conditional budget certification.

G. If the local public body does not bring its annual audit(s) into compliance with the audit rule as it pertains to timeliness of submission, the local public body may only receive conditional budget certification, and final budget certification shall be withheld until the corrective action plan process set forth in Subsection E of this section has been completed to the satisfaction of the local government division, unless there are other issues which may necessitate conditional budget certification.

2.2.3.9 MISSED BUDGETS AND PERIODIC FINANCIAL REPORTS:

A. A local public body that does not submit its proposed or final budget by the due date in 2.2.3.10 NMAC may receive only conditional budget certification for that reporting year.

B. When a local public body has two consecutive missed quarterly reports, the local government division shall notify the governing body in writing, identify the missed reports and the catch-up package required, and inform the state auditor in accordance with Subsection D of Section 12-6-3 NMSA 1978.

C. The local public body shall submit the catch-up package within sixty days of the notice, unless extended under 2.2.3.15 NMAC. Until the catch-up package is submitted and reconciled under Subsection D of this section, the local government division may grant only conditional budget certification. A local public body that is also subject to 2.2.3.8 NMAC may submit its catch-up package while its audit is pending.

D. Within thirty days after the state auditor releases the audit for the reporting year of the anchor quarter, the local government division shall compare the anchor quarter's ending cash for each fund with the fund's final cash position derived from the audited balance sheet. For a local public body that submits a tier certification or agreed-upon procedures report instead of a full audit, the comparison shall be to the cash balances in the agreed-upon procedures report or, if none, to bank statements as of the last day of the local public body's reporting year. A difference no greater than the lesser of one percent of the fund's final cash position or five thousand dollars ($5,000), after documented adjustments, is reconciled.

E. If a difference exceeds the amount in Subsection D of this section, the local public body shall explain the difference in writing and submit amended reports within thirty days, unless extended under 2.2.3.15 NMAC. The local government division shall grant final budget certification when the difference is reconciled.

F. Missed quarterly reports for periods before the anchor quarter are recorded as not filed and are reported to the state auditor as not filed. Acceptance of a catch-up package does not waive the requirement to submit periodic financial reports. For purposes of Subsection D of Section 9-6-5.2 NMSA 1978, the local government division may treat timely submission of a complete catch-up package as satisfactory progress toward compliance with the law.

G. A local public body may use the catch-up procedure in this section once in any three-year period. A subsequent failure within that period shall be addressed through a corrective action plan under 2.2.3.13 NMAC.

2.2.3.10 DUE DATES:

A. A local public body shall submit to the local government division:

(1) each periodic financial report no later than one month after the close of the quarter it covers;

(2) its proposed budget no later than the first day of the month in which its reporting year ends;

(3) its final budget no later than one month after its reporting year ends; and

(4) any budget adjustment request for a reporting year no later than twenty days after the last day of that reporting year.

B. Extensions may be granted under 2.2.3.15 NMAC.

C. The local government division shall not process a budget adjustment request for a reporting year until the local public body's budget for that year has received conditional budget certification or final budget certification. A local public body may remain under conditional budget certification for all or part of a reporting year, depending on when it meets the conditions for final budget certification. While under conditional budget certification, a local public body shall not make expenditures in excess of its conditionally certified budget, as amended by any approved budget adjustment, consistent with Sections 6-6-6 and 6-6-11 NMSA 1978.

2.2.3.11 REQUIRED CASH RESERVES:

A. Each budget submitted for certification shall include a cash balance reserve, calculated as a fraction of the fund's expenditures as reported in that budget, of at least:

(1) county general fund: two-twelfths (2/12) or three-twelfths (3/12), as determined under Subsection B of this section;

(2) county road fund: one-twelfth (1/12); and

(3) municipal general fund: one-twelfth (1/12).

B. Each year the local government division shall calculate each county's general fund reserve need based on the county's mix of gross receipts tax and property tax revenue. Based on the calculation:

(1) a county whose calculated need is two-twelfths (2/12) or less shall maintain a reserve of two-twelfths (2/12), unless the county is in financial distress;

(2) a county whose calculated need is more than two-twelfths (2/12) shall maintain a reserve of three-twelfths (3/12); and

(3) a county in financial distress shall maintain a reserve of three-twelfths (3/12), regardless of its calculated need.

2.2.3.12 GRANT COMPLIANCE:

A. This section applies to grants administered by the local government division, including capital outlay grants. This section does not apply to a grant recipient that is not required to obtain budget approval from the local government division; that recipient remains subject to the terms of its grant agreement. Remedies for grant noncompliance under this rule apply only as provided in the grant agreement and the applicable grant program rule.

B. A local public body is in grant noncompliance if it violates a provision of its grant agreement, including but not limited to when it:

(1) for a capital outlay grant, has not obligated at least five percent of the grant amount within six months after the grant agreement is signed;

(2) has not expended at least eighty-five percent of the grant amount by six months before the grant's reversion date;

(3) does not submit a request for reimbursement within thirty days after paying the vendor or contractor for the expenditure; or

(4) does not submit a required quarterly grant report in CAPS, the grant reporting system designated by the local government division, by its due date.

2.2.3.13 CORRECTIVE ACTION FOR FINANCIAL DISTRESS OR GRANT NONCOMPLIANCE:

A. When the local government division finds financial distress, when a local public body is in grant noncompliance under 2.2.3.12 NMAC, or when Subsection G of 2.2.3.9 NMAC applies, the local government division shall notify the governing body of the local public body in writing and shall require a corrective action plan. The local public body shall report monthly to the local government division on the progress of the plan.

B. While a corrective action plan under this section is open, the local public body's next budget may receive only conditional budget certification.

C. A corrective action plan under this section closes only when each of the following that applies has occurred: (1) the next two consecutive periodic financial reports due after the plan is approved have been submitted by their due dates and show no financial distress; (2) for a plan that includes grant noncompliance under 2.2.3.12 NMAC, each grant noncompliance condition that led to the plan has been corrected; and (3) the local government division determines in writing that all actions required by the plan have been completed.

D. The governing body of the local public body shall approve the corrective action plan by vote at a public meeting within thirty days after the local government division's written notice requiring the plan, unless extended under 2.2.3.15 NMAC. The local government division shall inform the state auditor, each funding entity of the local public body, the members of the legislature whose districts include the area served by the local public body, and the governing body of the local public body when the governing body approves a corrective action plan under this section and when the plan is released. Notice to the state auditor is provided in accordance with Subsection D of Section 12-6-3 NMSA 1978.

2.2.3.14 NONCOMPLIANCE BY LOCAL PUBLIC BODIES:

A. A local public body subject to 2.2.3.8, 2.2.3.9 or 2.2.3.13 NMAC is in noncompliance under this section if the local government division has sent written notice identifying one of the following conditions and, within thirty days after the notice, unless extended under 2.2.3.15 NMAC, the local public body has neither corrected the condition nor submitted a written response that states how and when the condition will be corrected and that the local government division determines shows satisfactory progress toward correcting it:

(1) its governing body does not approve a required corrective action plan by vote at a public meeting as required by Subsection E of 2.2.3.8 NMAC or Subsection D of 2.2.3.13 NMAC;

(2) it misses a corrective action plan milestone or monthly progress report;

(3) it misses a periodic financial report due date while under conditional budget certification; or

(4) it fails to resolve a reconciliation difference within the time allowed by Subsection E of 2.2.3.9 NMAC.

B. For a local public body in noncompliance, the local government division may:

(1) for a grant administered by the local government division, impose special grant conditions, including a fiscal agent where the grant agreement or the applicable grant program rule allows, withhold reimbursement payments, suspend the grant, or recommend reversion of the grant; and

(2) decline to award new grants administered by the local government division, and notify other granting agencies, until the noncompliance is resolved.

C. For a county or municipality in noncompliance that has not submitted a required audit report or has missed two consecutive periodic financial reports, the local government division may also request that the secretary of finance and administration direct the taxation and revenue department to temporarily withhold state distributions under Section 9-6-5.2 and Section 7-1-6.15 NMSA 1978.

D. For a local public body that is not a county or municipality, the remedies in Subsection B of this section apply.

E. When the local public body resolves the noncompliance, the local government division shall lift the remedies imposed under this section. Withheld state distributions are released as provided in Section 9-6-5.2 NMSA 1978.

F. The local government division will take measures to ensure that enforcement of this rule does not hinder the delivery of financial resources in emergency situations, conditions or events.

2.2.3.15 EXCEPTIONS:

A. The director of the local government division, upon a written finding of an emergency, extenuating circumstances or good cause, may grant an exception to any requirement of this rule that is not required by statute.

B. For purposes of this section, "good cause" means a circumstance, other than an emergency or extenuating circumstances, in which applying the requirement would not serve the objective of this rule stated in 2.2.3.6 NMAC, such as when strict application would interrupt essential public services or would place a burden on the local public body out of proportion to the purpose of the requirement.

C. An exception shall be limited to the relief necessary to address the emergency, extenuating circumstances or good cause, and shall state the period for which it applies. An exception shall not extend beyond the end of the reporting year in which it is granted unless renewed by a new written finding.

D. Each written finding shall state the requirement affected, the facts supporting the exception, the relief granted and its duration.

E. The local government division shall keep a record of each exception granted, and the director shall report the exceptions granted to the secretary of finance and administration annually.

These proposed amendments will be contained in 2.2.3 NMAC. The register and the proposed rule are available on the DFA website at https://www.nmdfa.state.nm.us/. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting DFA's General Counsel's office at dfalegal@dfa.nm.gov.

The DFA plans to adopt this rule on December 18, 2026.

A public hearing to receive testimony on this proposed rule will be held on 12/18/2026, at 9:30am.
A hearing will be held at the New Mexico Department of Finance and Administration, Bataan Memorial Building, 407 Galisteo St., Santa Fe, NM 87501, State Budget Conference Room, and via Microsoft Teams.

Join Microsoft Teams Meeting
Link: https://teams.microsoft.com/meet/2442892566953572?p=IfWwSBvbFgY1z4BvlI

Meeting ID: 244 289 256 695 357 2

Passcode: nQ9uq9Ez

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact our staff to discuss your accessibility needs at least one week prior, or as soon as possible, by emailing the Department of Finance and Administration, General Counsel Office at: dfalegal@dfa.nm.gov or 505-827-3985.

DFA will make copies of all comments available upon request, either by providing copies directly to a requestor or by making them available on the DFA website or at a location within the requestor's county.

Interested persons may address written comments to:
Department of Finance and Administration, Local Government Division
ATTN: 2.2.3 NMAC Public Comments
407 Galisteo St.
Bataan Memorial Building
Santa Fe, NM 87501

Recorded comments may be left at (505) 827-3985. Interested persons may also address comments via electronic mail to: dfalegal@dfa.nm.gov. Written mail, electronic mail, and recorded comments must be received no later than 5:00 p.m. MT on 12/17/2026. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the DFA website at https://www.nmdfa.state.nm.us/ along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.