TITLE 2 PUBLIC FINANCE
CHAPTER 91 GRANTS
PART 1 GRANT MANAGEMENT AND OVERSIGHT REQUIREMENTS

2.91.1.1 ISSUING AGENCY: Department of finance and administration.
[2.91.1.1 NMAC - N, 7/28/2026]

2.91.1.2 SCOPE: This rule applies to all state agencies involved in the issuance of capital outlay appropriations or special purpose appropriations authorized by the legislature.
[2.91.1.2 NMAC - N, 7/28/2026]

2.91.1.3 STATUTORY AUTHORITY: This rule is promulgated pursuant to the "Public Finance Accountability Act", Section 6-3b-1 NMSA 1978.
[2.91.1.3 NMAC - N, 7/28/2026]

2.91.1.4 DURATION: Permanent.
[2.91.1.4 NMAC - N, 7/28/2026]

2.91.1.5 EFFECTIVE DATE: July 28, 2026, unless a later date is cited at the end of a section or paragraph.
[2.91.1.5 NMAC - N, 7/28/2026]

2.91.1.6 OBJECTIVE: Establish uniform funding criteria and implement grant management and oversight requirements for state agencies responsible for disbursing capital outlay appropriations or other special purpose appropriations, thereby ensuring adherence to applicable laws and protecting public funds.
[2.91.1.6 NMAC - N, 7/28/2026]

2.91.1.7 DEFINITIONS:

A. "**Adequate accounting methods and procedures**" means that the design and operation of the grantee's internal controls allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, on a timely basis:

(1) noncompliance with applicable laws, policies, and procedures related to the expenditure of grant funds, including, but not limited to, expending grant funds after expiration of the expenditure period;

(2) misstatements regarding grant funds, including, but not limited to, the failure to timely and accurately record and report grant revenue and expenditures;

(3) the misappropriation of grant funds or assets acquired by grant funds, including, but not limited to, theft or embezzlement of funds or assets acquired with grant funds and the use of grant funds or assets acquired for other than allowable purposes.

B. "**Annual audit**" refers to the yearly review or examination of a grantee's financial affairs conducted by an independent auditor as mandated by the Audit Act.

C. "**Corrective action plan**" refers to a plan prepared by a grantee that addresses each annual audit finding in a comprehensive and detailed manner, with specific implementation steps and timelines for resolution. Corrective action plans must comply with 2.2.2.10 NMAC and GAGAS 6.57 and 6.58.

D. "**Department**" refers to the department of finance and administration.

E. "**Federal single audit**" refers to the mandatory, organization-wide audit required under 2 C.F.R. Part 200 for entities that spend $1,000,000 or more in federal funds within a fiscal year. Federal single audit includes all forms and federal single audit documentation required under the Federal Single Audit Act of 1984, as amended, and 2 CFR part 200, subpart F.

F. "**Fiscal Agent**" refers to an organization with adequate accounting methods and procedures approved by a grantee and the home agency to manage the financial and administrative matters of the grantee regarding a grant.

G. "**Force majeure event**" refers to an unusual, extraordinary, sudden, unexpected, unforeseeable, unavoidable, or uncontrollable event that makes performance of the requirements of this rule impossible or impracticable, including but not limited to natural disasters, war, strikes, or pandemics.

H. "**Grantee**" refers to an entity that receives a capital outlay appropriation or another special purpose appropriation from a state agency.

I. "**Home agency**" means the agency to which capital outlay or special appropriation is appropriated.

J. "**Independent auditor**" means a certified public accountant or chartered accountant approved by the state auditor to examine a grantee's financial records and transactions, impartially and objectively determining compliance with generally accepted accounting principles and state laws and rules.

K. "**Material weakness**" means a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented or detected and corrected on a timely basis.

L. "**Significant deficiency**" means a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness yet is important enough to merit attention by those charged with governance.

M. "**Special conditions**" refers to additional requirements or terms beyond the standard conditions outlined in the appropriation or grant agreement that mitigate risks identified in an annual audit, risk assessment, or project readiness review. This includes, but is not limited to, specific reporting formats, timelines, or frequency; restrictions on allowable costs or specific accounting practices; specific project activities, timelines, or milestones; rules about key personnel; change-in-personnel notifications; or applicable rates.

N. "**Special purpose appropriation**" refers to any nonrecurring, one-time appropriation of state funds authorized for a specific purpose. This type of appropriation is used to fund projects that are not part of a state agency's ongoing, annual operating budget.

O. "**State agency**" refers to any department, institution, board, bureau, commission, district, or committee of state government.

P. "**Tribal government**" means a federally recognized indian nation, tribe, or pueblo located wholly or partially in new mexico or any of its governmental entities or subdivisions.

[2.91.1.7 NMAC - N, 7/28/2026]

2.91.1.8 FUNDING CRITERIA:

A. To be eligible for state capital outlay appropriations or any special purpose appropriations, a grantee must meet the following criteria:

(1) A grantee must have completed an annual audit for one of the past two fiscal years, and the most recently completed annual audit must be a public record pursuant to the audit act.

(2) A grantee must adhere to financial reporting requirements and secure approval for the current fiscal year's budget from any applicable governing body or oversight agency.

(a) For grantees that are local public bodies as defined by Section 6-6-1, NMSA 1978, the applicable budgetary oversight agency is the local government division of the department.

(b) For grantees that are subject to the public school finance act, Section 22-8-11. NMSA 1978, the applicable budgetary oversight agency is the public education department.

(c) For grantees that are subject to the authority granted under Paragraph (2) of Subsection A of Section 21-1-26 NMSA 1978, the applicable budgetary oversight agency is the higher education department.

(3) Grantees exempt from annual audit requirements must demonstrate to the state agency making the award sufficient accounting methods and procedures that ensure a strong system of fiscal controls and proper tracking of fund payments, disbursements, and balances, adhering to the specific guidelines outlined in the state's model accounting practices, as amended.

(4) If a grantee's most recent annual audit documents material weaknesses or significant deficiencies, findings that raise concerns about the grantee's ability to expend grant funds in accordance with applicable law and to account for and safeguard grant funds and assets acquired with grant funds, or if the grantee's accounting methods and procedures fail to meet the requirements of Paragraph (3) above, the grantee must prepare a corrective action plan to address these issues.

(a) Grantees must include specific deadlines and responsible parties in corrective action plans to ensure accountability and progress tracking.

(b) Grantees must report monthly on the progress of the corrective action plan to their home agency until the material weaknesses, significant deficiencies, or other relevant findings are remedied as evidenced by certification from the state auditor per 2.91.1.9 NMAC below.

(5) In the case of a grantee who fails to meet any of the requirements of Paragraphs (1) - (4) above, before becoming eligible to receive capital outlay or special appropriation funding, the home agency issuing the funding must make one of the following determinations:

(a) the home agency can impose and has the resources to implement special grant conditions that will adequately address any relevant deficiencies in the grantee's accounting methods and procedures; or

(b) another entity with adequate accounting methods and procedures is able and willing to act as fiscal agent for the grant;

(c) where the home agency determines that another entity with adequate accounting methods and procedures is able and willing to act as fiscal agency for the grant, the home agency must impose special conditions that ensure the grantee implements a corrective action plan to remedy any deficiency in compliance with Paragraphs (1) - (4), promptly.

B. To be eligible for state capital outlay appropriations or any special purpose appropriations, a Tribal government must meet the following criteria:

(1) A grantee must have, for the most recently concluded fiscal year, timely submitted to the federal government a federal single audit report. A federal single audit report is considered timely if submitted by any extended due date granted by the grantee's federal cognizant agency.

(2) If a grantee's most recent federal single audit raises concerns about the grantee's ability to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired with grant funds:

(a) the grantee must remedy the inadequacies in its accounting methods and procedures to the satisfaction of the home agency making the grant;

(b) the home agency making the grant must determine it can impose and has the resources to implement special grant conditions that adequately address the inadequacies in the grantee's accounting methods and procedures; or

(c) the home agency making the grant must determine that another entity with adequate accounting methods and procedures is able and willing to act as the fiscal agent for the grant.
[2.91.1.8 NMAC - N, 7/28/2026]

2.91.1.9 CLEARANCE OF SPECIAL CONDITIONS OR FISCAL AGENT REQUIREMENTS: When a grantee is required under 2.91.1.8 NMAC to submit a corrective action plan or to comply with specific conditions, or when a fiscal agent is required for the disbursement of any capital outlay or special appropriations, the home agency disbursing the capital outlay or special appropriation shall enforce these conditions or the fiscal agent requirement unless and until:

A. All material weaknesses, significant deficiencies, or other relevant findings are addressed, as evidenced by certification from the state auditor in accordance with Section 12-6-5, NMSA 1978; or

B. the state auditor determines, based on corrective actions taken by the grantee, that the grantee has adequate accounting methods and procedures to track and safeguard grant funds and assets acquired with the grant.
[2.91.1.9 NMAC - N, 7/28/2026]

2.91.1.10 GRANT MANAGEMENT AND OVERSIGHT:

A. Home agencies must conduct a risk assessment on project readiness and ensure grantees are prepared to spend at least eighty-five percent of their allocated capital outlay funds within three years of the grant award.

B. Home agencies must adhere to the state’s model accounting practices requirements for grant management and oversight (FIN 9.2), as amended, and use an approved capital outlay or special appropriation grant agreement template developed by the department.

C. Home agencies must analyze and review compliance and expenditure reports submitted by grantees for capital outlay or special appropriations at least quarterly, and they must also be able to create fund drawdown projections for each project.

D. Home agencies, in collaboration with the state auditor’s office, must develop policies and procedures for performing field audits of capital outlay or special appropriation projects using a statistical or stratified approach.

E. Grantees must undergo performance reviews to assess the implementation of corrective action plans for material weaknesses or significant deficiencies. The home agency must monitor compliance and take appropriate steps to address any non-compliance throughout the grant period.

F. Home agencies must ensure that the sales, leases, and licenses of capital assets acquired with appropriations are approved in accordance with applicable law.

G. Home agencies must continuously monitor a grantee's compliance with the applicable uniform funding criteria and take appropriate action to correct any noncompliance.

[2.91.1.10 NMAC - N, 7/28/2026]

2.91.1.11 FORCE MAJEURE WAIVER REQUESTS:

A. Grantees may request a waiver of strict compliance with the Public Finance Accountability Act due to a force majeure event.

B. The grantee must submit a detailed written waiver request to the home agency that administers the capital outlay appropriation or special purpose appropriation, including the following information:

(1) the specific force majeure circumstances that prevent strict compliance;

(2) the impact of the force majeure event on strict compliance;

(3) the alternative procedures the grantee proposes to prevent waste, fraud, and abuse of the appropriation; and

(4) a comprehensive timeline outlining the essential steps and completion timing for the grantee to achieve compliance with the Public Finance and Accountability Act.

C. Upon receiving a waiver request, home agencies must review the request, determine its reasonableness, and evaluate any alternative procedures that can be implemented to mitigate potential waste, fraud, or abuse resulting from the waiver of strict adherence to the Public Finance Accountability Act.

D. Home agencies must submit waiver requests for legal review to the department's general counsel's office at dfalegal@dfa.nm.gov.

E. At their sole discretion, the secretary of the department, in consultation with the state auditor, may grant a temporary waiver of any or all requirements of this rule, impose specific conditions for the award of a grant agreement, or establish any additional conditions or procedures necessary to prevent waste, fraud, or abuse of public funds.

F. The department will give all state agencies managing appropriations for the grantee a written determination that outlines any granted waiver, along with any alternative conditions or requirements related to that waiver.

[2.91.1.11 NMAC - N, 7/28/2026]

2.91.1.12 REQUESTS FOR FUNDING TO DEVELOP AND IMPLEMENT CORRECTIVE ACTION PLANS:

A. Grantees may request funding from the state auditor to develop, implement, and audit compliance with corrective action plans that address material weaknesses, significant deficiencies, or other relevant findings.

B. The state auditor, at his discretion and depending on available funding, will review and approve requests based on the grantee's demonstrated need and the potential impact on protecting public funds.

[2.91.1.12 NMAC - N, 7/28/2026]

HISTORY OF 2.91.1 NMAC: [RESERVED]