



Office of the State Auditor
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NEW MEXICO
LEGISLATIVE
FINANCE
COMMITTEE

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RISK ADVISORY

TO: New Mexico Agency Secretaries and Leaders, Chief Financial Officers

FROM: The Office of the State Auditor and Legislative Finance Committee

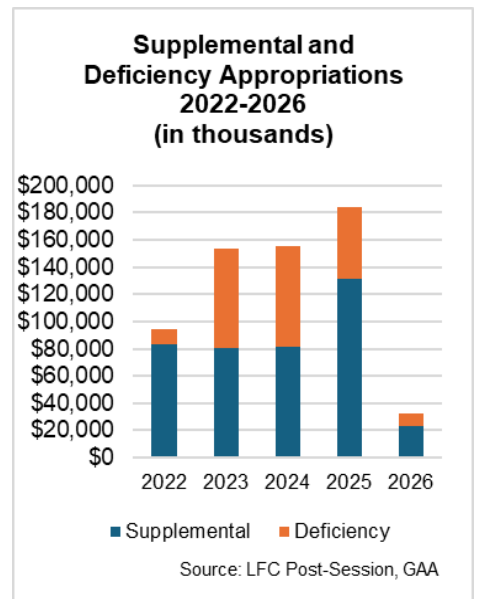
RISK ADVISORY: Operating Budget Deficiencies and State Statutes Governing Budget Authority

Introduction

The Legislative Finance Committee (LFC) and Office of the State Auditor (OSA) are issuing a joint advisory highlighting risk related to agency spending exceeding appropriations and budget authority. According to state law, incurring expenditures beyond available appropriations may result in audit findings, heightened oversight and/or criminal liability. This advisory provides statutory references for agencies along with recommendations to reduce risk and help avoid deficiencies.

In recent fiscal years, state agency supplemental and appropriation requests have increased, signaling growing pressure on agency budgets and a heightened need for strong internal controls, careful planning, and clear understanding of statutory responsibilities related to spending.¹

OSA reports have highlighted an increase in agency budget deficiencies.² In 2026, state agencies requested over \$230 million in supplemental and deficiency appropriations, while the Legislature funded \$32.1 million of these requests (roughly 14 percent).



¹ A supplemental appropriation augments the current year’s operating budget. A deficiency appropriation meets obligations incurred in a prior fiscal year.

² In 2024, OSA issued [recommendations](#) to address increases in deficiency appropriation requests. In early 2025, OSA published subsequent [analysis and recommendations](#) on updating the financial policy framework and statutes to reflect current practices in the state.

While shortfalls can arise from unpredictable circumstances, many are associated with failures to adhere to budget authority, allotment requirements, or established expenditure controls. Common contributing factors associated with supplemental and deficiency requests can include:

- Deficits in the personal services and employee benefits category caused by providing off-cycle salary increases exceeding appropriations provided in the compensation section of the General Appropriation Act or hiring unfunded vacant positions;
- Failure to reduce expenditures when other state funds or federal revenues fall below budgeted levels; and
- Untimely invoice processing and payment.

As New Mexico approaches an odd-numbered fiscal year, LFC and OSA remind agencies that compliance with statutory spending limits, including restrictions for odd-numbered fiscal years, is critical to maintaining fiscal integrity, avoiding audit findings, and preserving legislative and public confidence in state financial management.

State Agencies Are Responsible for Legal Budgeting and Spending

New Mexico law defines state agency responsibilities for budgeting and spending.

- [Section 6-3-7 NMSA 1978](#) requires agencies to operate within approved budgets.
- [Section 6-5-6\(A\) NMSA 1978](#) requires state agencies and the Department of Finance and Administration (DFA) to ensure expenditures do not exceed (1) appropriations, and (2) periodic allotments or unencumbered fund balances including receivables (with limited federal exceptions).
- [Section 6-5-6\(C\) NMSA 1978](#) requires agencies to determine that expenditures (1) serve a public benefit and purpose consistent with the related appropriation, and (2) are necessary to carry out the agency's statutory mission prior to committing to the expenditure.
- [Section 6-4-6\(A\) NMSA 1978](#) prohibits agencies from paying expenses from any fund or account unless there is a reasonable expectation that the fund will be fully replenished and capable of meeting all obligations by the end of the fiscal year.
- Sections [6-3-24](#) and [6-3-25 NMSA 1978](#) establish procedures for requesting budget adjustments. Section 13(C) of the General Appropriation Act of 2026 (GAA) permits agencies to request category transfers. Section 13(D) of the GAA limits budget increase requests to no more than 5 percent, if the agency collects money in excess of those appropriated. Agencies generally cannot request a budget adjustment to address an overall projected shortfall and cannot request an increase in general fund appropriations through budget adjustments.

In addition, DFA has important responsibilities for ensuring state agencies comply with their budgeting and spending requirements and responsibilities.

- [Section 6-3-6 NMSA 1978](#) authorizes DFA to establish and enforce rules that govern the timing and amount of agency spending through periodic allotments.
- [Section 6-3-15\(D\) NMSA 1978](#) requires DFA's State Budget Division to obtain information from each state agency on budgetary and financial problems, including operating costs and past and current financial condition.

- [Section 6-5-2.1\(D\) NMSA 1978](#) authorizes DFA’s Financial Control Division to verify and control state agency compliance with allotments.

State agencies that violate expenditure restrictions may face consequences, such as:

- Serious penalties, including fines and/or imprisonment, defined in [Section 6-3-8 NMSA 1978](#), may be imposed on any public official or state employee;
- Budgetary and cash deficiency audit findings under OSA’s Audit Rule (2.2.10(R)(1) NMAC);
- DFA withholding or conditioning of allotments; and
- Increased Legislative scrutiny.

The 50 percent Rule: Spending Limits in Odd-Numbered Fiscal Years

LFC and OSA specifically remind state agencies of the statutory spending limitation that applies to the first six months of odd-numbered fiscal years. This rule also helps prevent mid-year supplemental appropriation requests and ease fiscal pressure on a new Legislature.

- [Section 6-3-6\(B\) NMSA 1978](#) limits most state agencies to no more than 50 percent of their appropriation or approved budget during the first six months of the fiscal year.
- DFA may approve exceptions in limited circumstances, but without approval, agencies must plan to operate within this constraint.

DFA recently issued a memorandum with further detail regarding compliance with Section 6-3-6 NMSA 1978.

Reducing Deficiency and Supplemental Risk

[Section 6-5-2\(C\) NMSA 1978](#) requires state agencies to implement internal accounting controls to prevent accounting errors and violations of state and federal law and rules related to financial matters, and to implement controls to prevent the submission of processing documents to the DFA Financial Control Division that contain errors or that are for a purpose not authorized by law. To provide reasonable assurance that agencies operate within statutory constraints, LFC and OSA recommend the following foundational best practices:

1. **Monthly Budget Monitoring:** Review expenditures, encumbrances, and remaining authority and monitor spending against both total appropriation and allotment pacing.
2. **Early Action:** Identify emerging shortfalls early, especially for personnel and contractual costs. Engage DFA promptly when projections indicate a shortfall.
3. **Allotment Awareness:** Ensure program and financial staff understand allotment limits, not just total budget authority. Adjust spending plans proactively in election-related fiscal years.
4. **Encumbrance Discipline:** Review encumbrances regularly to ensure obligations remain valid, timely, and supported by available budget authority and allotment.
5. **Advance Planning for Known Constraints:** Incorporate the 50 percent rule into operating plans, hiring schedules, and contract timing. Avoid frontloading expenditures that restrict flexibility later in the year.

Planning for the Upcoming Odd-Numbered Fiscal Year

As the state transitions into an upcoming fiscal year subject to the 50 percent rule, agencies must actively plan for and manage this constraint. Agencies should expect that:

- DFA will continue to enforce allotment and warrant controls consistent with statute.
- LFC and OSA will continue to review agency spending, deficiencies, audit findings, and patterns of noncompliance.
- Repeated or preventable deficiencies may prompt heightened legislative oversight.

Strong planning, early engagement, and adherence to statutory limits are the most effective tools agencies have to avoid fiscal stress and maintain public trust.

LFC and the OSA appreciate the efforts of agency leadership and financial staff to steward public funds responsibly.