Office of the State Auditor
Joseph M Maestas, PE, CFE

2025-03

Transparency Report: Budgetary Controls

Government Accountability Office
David Craig, MPA, MAcct, CGFM

January 2025

To report fraud:
https://nmosa.caseiq.app/portal

Background

Policy Issue Timeline

January 10, 2024 – Senate Finance Committee requests the Office of the State Auditor (OSA) to review the reasons for increasing state agency deficiency requests.

April to June 2024 – OSA's Government Accountability Office (GAO) holds scoping meetings with Legislative Finance Committee (LFC) staff and requests data from Department of Finance and Administration's (DFA's) Budget Division to identify root causes for state agency deficiencies.

August 19, 2024 – OSA publishes *Transparency Report 2025-01: State Agency Deficiency Appropriation Requests*. Among its recommendations are reviewing the sections of state law regarding budget adjustment or budgetary oversight to determine if additional steps regarding budgetary controls and oversight are needed.

October 23, 2024 – LFC members ask OSA to review budgetary control statutes to determine recommendations for statutory changes. As most budgetary oversight and approval lay with LFC and DFA, OSA responds it may only present recommendations for consideration of LFC, DFA and other stakeholders.

November to December 2024 – OSA staff perform an in-depth analysis of our state's statutes and budgetary controls in neighbor states and provides policy considerations in this report.

Analysis Procedures

In order to determine current statutory provisions for budget authority and related violations of budget authorizations, OSA's GAO and Quality Management staff separately analyzed the financial oversight framework in law, rule and policy. Legal provisions reviewed include, but are not limited to, Public Finances statutes, Election Officials provisions and Department of Finance and Administration's (DFA's) administrative rule and DFA's Model Accounting Practices (MAP's). In addition, a comparison analysis of legal budgetary controls procedures was conducted of all of New Mexico's neighbor states to determine other state practices. This report presents results to inform potential changes to state statute.

"In budgetary control instances, like failure to adhere to approved budget authority without an appropriate budget adjustment request, state law and rule is not explicit in penalties or remediation."

-OSA GAO's Transparency Report 2025-01: State Agency Deficiency Appropriation Requests

Budgetary Controls: A Statutory Analysis

Executive Summary: Key Highlights

- **The state's financial policy framework is outdated and**, in some instances, does not reflect current practices. The framework **needs to be modernized** to reflect current practices in state government.
- **Budgetary controls**, like monitoring for cash deficiencies, and clarifying revenue and expenditure requirements **should be addressed.**
- **Statutes should** also **better clarify roles and responsibilities** and be explicit on funds that require budgetary controls.
- **New Mexico should look to other state practices** to review best practices for ensuring state agencies do not experience budget and expenditure overruns.

Preventing Cash Deficiencies

The policy solution to prevent state agencies from spending more money than available is to strengthen, modernize, and clarify state agency budget making and maintenance, financial operations and related oversight.

Key Terms

Budget Deficiency

An agency fund has sufficient cash balances to recognize expenditures in excess of approved budgets but does not have legislative authority to spend this excess cash.

Cash Deficiency

An agency fund has budgetary authority to spend up to a certain amount but does not have adequate cash to support the legal expenditures. A cash deficiency can also occur when a particular fund has no legally adopted budget but has a mandate to spend certain amounts.

Statutory Framework

Warranting and Overdraw Penalties

SELECTED STATUTES

8-6-7 NMSA 1978 provides penalties for wrongful drawing or payment of warrant by the Secretary of Finance and Administration or State Treasurer.

6-5-6 NMSA 1978 provides for state agencies and DFA's Financial Control Division (FCD) to ensure actual expenditures do not exceed: appropriations, allotments that occur every other year, or unencumbered balances of funds at its disposal including receivables (like federal funds not yet received).

BRIEF SUMMARY

The first section of law cited above may have been designed to prevent a cash deficiency but is a very old law dating from when New Mexico was a territory. The penalties are for warrants being issued by the Secretary of Finance and Administration and State Treasurer when they have information that funds are not available. It was last updated in 2003 to account for accrued receivables, dating to when the Treasurer and DFA had separate fund tracking.

This second section of law also may have been designed to prevent a cash deficiency by ensuring DFA's FCD does not issue warrants that exceed periodic allotments or funds at the agency disposal. The second statute also tasks agencies with ensuring the expenditure meets the purpose of the appropriation.

KEY ISSUES

Under current state financial operations, state tracking by fund was folded into the state's enterprise resource planning (ERP or SHARE) system and there is no longer any difference between drawing a warrant and paying a warrant. A commitment to pay is made between the state agency and DFA. As such, the Treasurer is no longer involved in warrants. With regard to sections related to receivables, the state operates on a cash basis and some expenditures like salaries and benefits that are dependent on receivables depend on the receipt of those revenues and/or very accurate forecasting of the receivable revenues - often federal funds. Specific language regarding "funds at the agency's disposal" is vague, prone to subjectivity and when paired with the allowance to expend against estimated federal funds that have not been received or other receivables, makes it impractical to deny paying a warrant based upon a determination that funds are not available at the agency. As such, FCD is not in a position to make a better determination on availability of funds than the state agency or the DFA Budget Division. Traditionally, state financial oversight entities are deferential to agency forecasts of federal funds. Arguably, the FCD's ability to refuse payment on a warrant is limited and informed by data the agency being overseen provides. Any exact yearly receivables amount is not known on a daily basis and only completely available at fiscal year close. Additionally, there are limited penalties if state agencies or DFA FCD violate the second state statute.

POLICY RECOMMENDATIONS

To update and modernize the overdraw prevention statutes, policymakers may wish to revise law to reflect current processes by removing the Treasurer from any warrant issuing discussions, focusing on state agency roles in the process, and formalize and strengthen DFA's Budget Division's role in determining funds at a state agency's disposal (perhaps by certifying available federal funds or other receivables). Policymakers may wish to clarify how to measure the impact receivables and other accruals have on any measure of the ability to pay. Policymakers may wish to strengthen DFA FCD and Budget Division oversight of federal revenue projections and generally have increased oversight of revenues. Policymakers may also wish to consider new penalties for exceeding approved budgets without approval or expending above allotments/funds available to include reviewing the process for certifying, licensing or removing agency financial or other executive staff.

Budgetary Control and Penalties

SELECTED STATUTES

6-3-6 and 6-3-8 NMSA 1978 provide the responsibilities of DFA's Budget Division for allotments, withholding allotments, and penalties for expending in excess of allotments.

BRIEF SUMMARY

These sections of law provide for DFA's Budget Division to promulgate rules for periodic allotments every other year and tasks the DFA State Budget Division as the responsible entity for limiting the expenditures to the amount allotted.

KEY ISSUES

These sections of law are designed to help prevent cash deficiencies by putting in place the budgetary control of disbursement via allotments. Allotments can ensure state agencies limit expenditures and timely draw down federal funds by periodically limiting the access to state funds that may be expended. However, the use of the allotment limitation only applies to odd numbered fiscal years, presumably to accommodate elections and/or the budget sessions. As such, there are only allotments in place every other year and only for six months of the year. State government uses fund accounting on a cash basis for day-to-day operations. There is no language in these specific statutes regarding fund positions and it is therefore unclear if the limitations apply only to an agency's general fund appropriations or whether it captures other funds (including unbudgeted funds). The statute's scope appears limited to appropriations or approved budget and does not clarify revenues by source leaving unanswered whether federal funds are included.

The penalties (up to ten years in prison and $10,000 plus amounts over-expended) are significant, but it is unclear how a violation would be made enforceable given the vagueness of the scope of the authority. It is also unclear how allotments being limited to 6 months every other year is an effective budgetary control.

Similar to how DFA's FCD is not in the best position to determine "funds at the agency's disposal", DFA's Budget Division cannot be placed in the best position to determine how to limit the expenditures that DFA's FCD oversees and allots to an agency.

POLICY RECOMMENDATIONS

To update and modernize the budgetary control statutes, policy makers may wish to revise these sections to create standardization across years in the use of allotments, increase allotment frequency, provide clarification on funds requiring budgetary control, and expand penalties to include non-monetary penalties like allowing DFA to certify, license or remove agency financial or executive staff. Policymakers may wish to consider allowing DFA to enforce budgetary limitations on state agencies by reducing budget authority and allotments when revenues receivable are unlikely to be realized.

Other Select Budgetary Controls

SELECTED STATUTES

6-3-25 B NMSA 1978 provides for agencies to follow proper budget adjustment procedures.

6-3-15 NMSA 1978 requires DFA to obtain information on any agency financial problems.

6-4-6 NMSA 1978 prohibits DFA payment of expenses or obligations of state government from any fund or account unless it may reasonably be expected that at the end of the fiscal year the balances in that fund or account will be fully restored.

6-5-2 NMSA 1978 provides state agencies are responsible for establishing systems of controls to prevent accounting errors and violations of state and federal law and rules related to financial matters.

6-5-2.1 NMSA 1978 creates the Financial Control Division duties for financial oversight.

BRIEF SUMMARY

Certain Public Finance statutes set up budget adjustment request and approval procedures and requires DFA to monitor agency financial problems. Other statutes govern how DFA should not pay expenses from any fund or account unless it may be "reasonably expected" that the balances in the fund will be restored. Lastly, sections of the Public Finance laws demarcate the financial controls that establish agency roles and responsibilities from DFA's FCD's financial oversight roles and responsibilities.

KEY ISSUES

Similar to how previously discussed statutory language regarding "funds at [an agency's] disposal" is vague, so is the language in the budgetary control statutes indicating that expenditures should not be paid unless fund balances are "reasonably expected" to be restored.

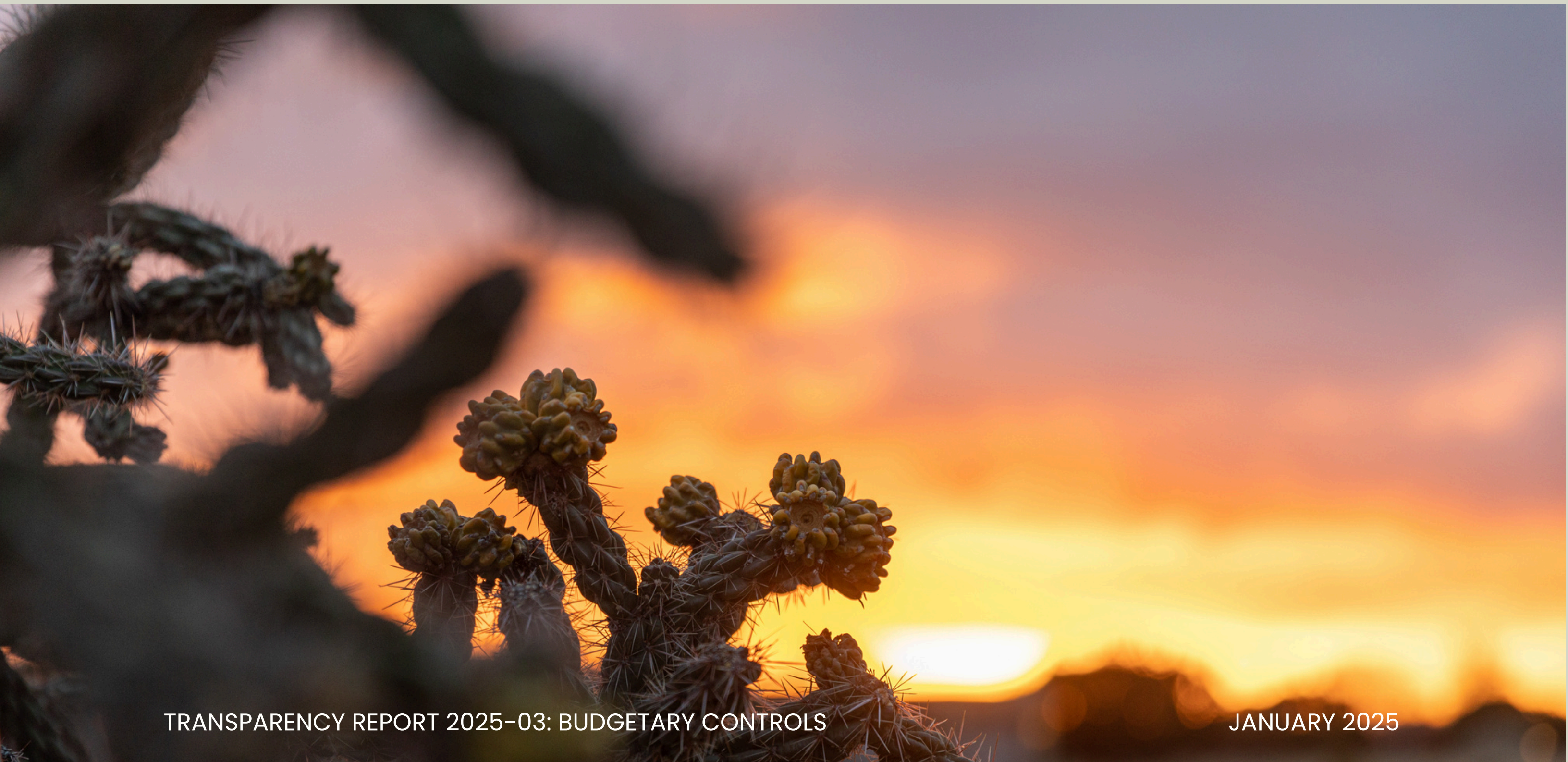
For DFA to make a determination on whether state agency funds are reasonably expected to be received depends either on the accuracy of forecasted federal or special revenue funds or on the reconciliation at the close of the fiscal year. Federal funds are traditionally difficult to forecast, with agencies sometimes being the only entities with supporting documentation to determine revenues (notices of award, etc.). The accuracy of the data depends greatly on timing. Recent requirements to submit state agency Operating Budgets earlier than statutorily mandated may create greater uncertainty in the accuracy of federal revenue forecasts if projections are linked to actuals received further in the past. Submitting state agency budgets with less accurate federal revenues may create budget authority for federal funds that are over or understated.

Balancing the need for agencies to maintain financial controls around receipt of revenues by year-end but empowering DFA to have the proper oversight over federal revenue receipts is an important policy goal when contemplating revisions to budgetary control statutes. Policymakers may wish to allow DFA to require budget adjustments or withhold disbursements as necessary to restrict over-expenditure by fund. Clarifying and specifying the responsibilities of the agency in ensuring proper tracking of both budgeted and actual revenues and expenditures, and clarifying the role of a strong, centralized DFA in ensuring these responsibilities are met and revenues received is another important policy goal.

POLICY RECOMMENDATIONS

Policymakers should consider strengthening DFA's roles and responsibilities to ensure agencies adhere to budget, creating a stronger, more centralized DFA Budget Division and FCD that has the additional resources (including human resources) necessary to oversee agencies and enforce stricter controls. To do so, policymakers may wish to revisit the provisions for budget adjustments to require more stringent procedures for approval and clarify the process by which DFA reviews agency forecasts for budgetary amounts and the corresponding actual revenues and expenditures to insert more rigor into state agency budget development and maintenance. Policymakers may wish to also revisit the sections of law related to FCD's duties to penalize state agencies for violations, up to and including personal liabilities for exempt chief financial officers, cabinet secretaries or other executive management.

Similarly, policymakers may also wish to strengthen federal revenue monitoring throughout the year to include more frequent DFA monitoring. Policymakers may wish to allow DFA to mandate budget adjustment requests or allow DFA to require agencies include robust supporting documentation for federal funds budget adjustments. Policymakers may also wish to reinstitute limitations on appropriations and allow determination of expenditure limits by DFA. Policymakers should consider data quality impacts of moving up agency budget submittals. Policymakers may also consider a process for mandatory budget adjustments if revenues are not receipted by certain key dates throughout the state fiscal year - via across-the-board cuts statewide or by agency.



Neighbor State Strategies

OSA staff analyzed various state statues of neighbor states via internet search functions to compare and contrast to the Public Finances and other sections of state statute. The elements below summarize differences.

Arizona

Arizona has detailed provisions for state agency management of state funds, including requirements for individual budget units to account for receipts and expenditures.

Establishes a budget stabilization fund for economic downturns.

Colorado

Has a strict balanced budget requirement that requires expenditures not be in excess of available revenues and beginning fund balances regardless of appropriations.

Each state agency must adopt budgets that includes all proposed expenditures and must include details of anticipated revenues.

Requires more detailed disclosure of state agency obligations like leases or memoranda of understanding.

Utah

Utah has more detailed budget execution statutes providing details in a Budget Procedures Act.

Agencies must prepare a detailed budget execution plan, somewhat reversing the budget development process.

The threshold for triggering revisions to an approved budget execution plan appear very low and can be triggered by revenue shortfalls.

Oklahoma

Limits appropriations to 95% of certified revenues and allows the Executive to certify revenues.

Has a revenue failure statute allowing the Executive to make across-the-board cuts to state agency budgets after the budget is enacted.

Has detailed fund management provisions beyond the state general fund.

Texas

Allows the Legislative Budget Board or the Executive to propose changes to appropriations after enactment and prohibit or transfer appropriations.

Provides for adjusting the budget in response to emergencies.

Legislative Branch plays significant role in budget oversight.

Comparisons

All states require balanced budgets, but the mechanisms and specific requirements to balance the budget vary.

States differ in their oversight mechanisms, some involving Governor and Legislative staff directly.

Some states have more detailed provisions for managing budget adjustments during revenue shortfalls and reallocations.

SUMMARIZED RECOMMENDATIONS

A PLAN FOR IMPROVED FINANCIAL CONTROLS

Modernize

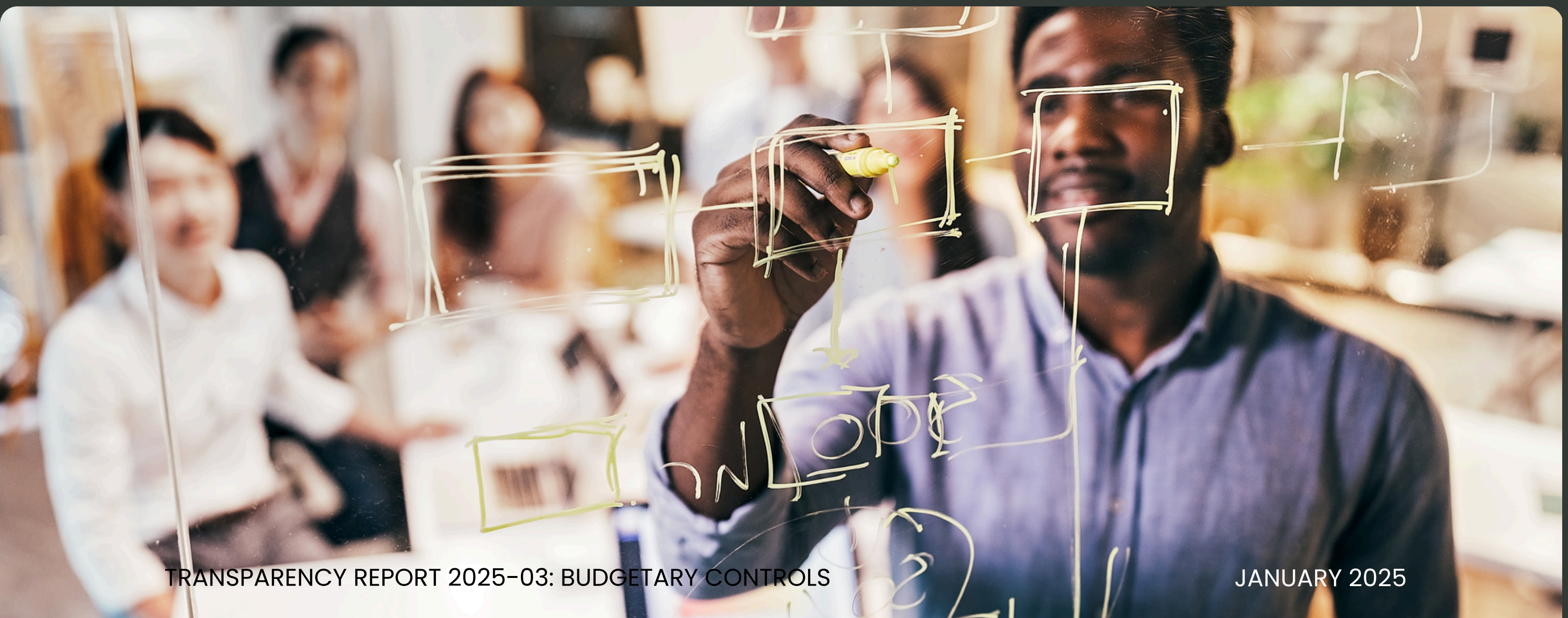
Modify statutes to reflect current state financial operations. Ensure legal framework involves current lines of authority, financial oversight responsibilities and reflects electronic processes. Ensure penalties are effective and enforceable.

Clarify

Remove the vagueness regarding roles and responsibilities between agencies and DFA. Remove conflicts in statute when older statutes conflict with newer. Promulgate new statute to enhance controls.

Look Ahead

Many elements of our state statute are so outdated that they conflict with current practice or the current electronic SHARE system. As SHARE reaches the end of its useful life, we should also look to statutes that reflect any upcoming systems.



Content Input

Joseph M Maestas, PE, CFE
New Mexico State Auditor

Ricky A Bejarano, CPA, CGMA
New Mexico Deputy State Auditor

David Craig, MPA, MAcct, CGFM
Government Accountability Office,Division Director

Elise Mignardot, CPA
Quality Management Division Director

List of Statutes Examined

This list of statutes is not intended to be all encompassing but provides a starting point for any examination related to modernizing budgetary control statutes. Additional examination may be warranted to update all financial operations statutes.

6-3-5 NMSA 1978
6-3-6 NMSA 1978
6-3-8 NMSA 1978
6-3-11.1 NMSA 1978
6-3-11.2 NMSA 1978
6-3-15 NMSA 1978
6-3-25 B NMSA 1978
6-4-6 NMSA 1978
6-5-2 NMSA 1978
6-5-2.1 NMSA 1978
6-5-6 NMSA 1978
6-5-7 NMSA 1978
6-8-1 D NMSA 1978
6-8-6 NMSA 1978
6-10-3 NMSA 1978
8-6-7 NMSA 1978

35-1 et seq. ARS 2001
29-1 102 et seq. CRS
Oklahoma Constitution
Article X, Section 23
3B-317 TGC
3B-322 TGC
63J-1-101 et seq. UC