



County of Bernalillo  
Examination Report of the  
Bernalillo County Treasurer's Office  
July 1, 2010 through March 31, 2014

**MOSS ADAMS** LLP

Certified Public Accountants | Business Consultants

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## REPORT OF INDEPENDENT AUDITORS

To the Audit Committee  
County of Bernalillo

We have examined the Bernalillo County Treasurer's Office compliance with the specified Compliance Criteria described in Exhibit A, for the period July 1, 2010 through March 31, 2014. The County of Bernalillo's management is responsible for this statement. Our responsibility is to express an opinion based on our examination.

Our examination was conducted in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States and attestation standards established by the American Institute of Certified Public Accountants and, accordingly, included examining, on a test basis, evidence supporting compliance criteria as described in Exhibit A and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion. Our examination does not provide a legal determination on Bernalillo County Treasurer's Office compliance with the specified compliance criteria.

Our consideration of internal control over compliance was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over compliance that might be material weaknesses or significant deficiencies.

In our opinion, except for the weaknesses described in the Schedule of Findings of this report, the Bernalillo County Treasurer's Office complied, in all material respects, with the aforementioned requirements described in Exhibit A, for the period July 1, 2010 through March 31, 2014.

This report is intended solely for the information and use of the Office of the State Auditor, the Department of Finance and Administration-Local Government Division, and Bernalillo County management and is not intended to be and should not be used by anyone other than these specified parties.



Albuquerque, New Mexico  
November 4, 2014

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**DESCRIPTION OF THE EXAMINATION**

On November 13, 2013, the Office of the State Auditor designated Bernalillo County for an examination pursuant to the State Auditor's authority under the Audit Act, specifically Section 12-6-3(C) NMSA 1978, which provides the State Auditor "may cause the financial affairs of an agency to be audited in whole or in part". Given the County's fiscal year 2013 financial audit findings and troubling risks related to the County Treasurer's Office, an examination of the County Treasurer's internal controls and management related to investment transactions was critical.

We performed an examination for the specified compliance criteria as described in Exhibit A, for the period July 1, 2010 through March 31, 2014, relating to certain financial affairs and transactions of the County Treasurer's Office. The scope of work also included follow-up procedures to ensure that audit findings noted in the fiscal year 2013 audited financial statements had been addressed in the current fiscal year. However, the revised investment policy and reorganization of the investment committee did not come into effect until April 2014, which is outside the scope of this examination. Therefore, some of the findings reported in the fiscal year 2013 audited financial statements were not addressed within the scope of this examination.

During the course of this examination, we interviewed current and former County Treasurer Office employees, including the former and current Treasurer.

The scope of work was expanded to include other matters warranting management's attention identified during the course of the examination procedures that indicated weaknesses in internal controls, fraud, waste, or abuse.

**COUNTY TREASURER DESCRIPTION**

The County Treasurer's Office is the property tax collector for the County of Bernalillo, City of Albuquerque, Albuquerque Public Schools, the State of New Mexico, and other taxing agencies within Bernalillo County. More than 272,000 property tax bills, plus approximately 34,000 delinquency notices are mailed by the County Treasurer's Office annually. The County Treasurer's office is responsible for making investment decisions and manages an investment portfolio from \$225,079,620 to \$297,297,632 from fiscal year 2011 through 2013, respectively.

As the county's "banker," the County Treasurer's Office also collects money for a variety of county services, licenses, and revenues from bond issues and special assessments. It supervises how public money is invested based on the advice and consent of the County Commission.

The County Treasurer is an elected position, and there are no requirements of an investment background to run for office. Patrick Padilla served as County Treasurer for eight years from January 2005 through December 2012. As of January 2013, Manny Ortiz is serving as the County Treasurer.

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**CLASSIFICATION OF FINDINGS**

The findings in this report are classified as follows:

***Significant Deficiencies***

A significant deficiency in internal control over compliance is a deficiency, or a combination of deficiencies, in internal control over compliance with a compliance requirement of the specified compliance requirements, described in Exhibit A, that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

***Material Weaknesses***

A material weakness in internal control over compliance is a deficiency, or combination of deficiencies in internal control over compliance with a compliance requirement of the specified compliance requirements, described in Exhibit A, such that there is a reasonable possibility that a material misstatement of the specified compliance requirements will not be prevented, or detected and corrected, on a timely basis.

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**SCHEDULE OF FINDINGS**

**2014-001 Investment Files (Material Weakness)**

*Condition:* We tested all 495 investment transactions, including purchases and sales, during the period of July 1, 2010 through March 31, 2014. During our test work of the investment files, we noted neither the former nor current County Treasurer complied with investment file record requirements.

We identified the following related to the former County Treasurer:

- 128 purchase transactions totaling \$616,180,000 did not have support from the broker on file for any of the bids documented on the bid sheets. As of 12/1/2011, the Treasurer's Office was to maintain a copy of the email with the bid. Of these 128 purchase transactions, 5 were subsequent to 12/1/2011 for a total of \$2,525,000. In addition, 125 of these transactions totaling \$597,499,000 did not have any support for the final bid selected. Of these 125 transactions, 4 were subsequent to 12/1/2011 for a total of \$2,250,000.
- 18 purchase transactions totaling \$93,713,000 had incomplete bid sheets. Bid sheets were missing the time, price, yield, discount, maturity, settlement and/or approvals.
- 11 purchase transactions totaling \$55,681,000 where the bid sheets had no signature/approval by the former County Treasurer, or designee, as required in the investment policy.
- 6 purchase transactions totaling \$27,275,000 had no bid sheets on file.
- One purchase transaction totaling \$5,000,000 where the same bid sheet was used for a purchase on October 4, 2010 and then again on August 24, 2011.
- One purchase transaction totaling \$5,000,000 where the settlement date of 07/29/2010 was two weeks after the bid date of 07/13/2010. The investment was purchased at a 4% yield higher than what was documented on the bid sheet. The documentation provided does not adequately explain the change in purchasing at a higher yield.
- One purchase transaction totaling \$5,000,000 where the broker selected had a second opportunity to submit a lower price after the other two brokers submitted a bid.
- One purchase transaction totaling \$10,000,000 where there was a bid sheet on the settlement; however, there was no third party verification confirmation covering the terms. We further noted the bid sheet was not filled out completely.
- One purchase transaction totaling \$7,000,000 where the bid sheet was completed; however, the time of day on the bid sheet did not agree to the third party email confirmations. The email confirmations were before the time noted for the phone calls.

We identified the following related to the current County Treasurer:

- Purchase transactions on 1/23/2013, 1/30/2013, and 5/2/2013 totaling \$15,000,000 did not have support for any of the bids documented on the bid sheets. In addition, one of these transactions totaling \$5,000,000 did not have support for the final bid selected.

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- 10 purchase transactions totaling \$51,393,000 where the bid sheets were not completed. Bid sheets were missing the time, price, yield, discount, maturity, settlement and/or approvals. The purchase dates for these transactions range from 1/31/2013-6/6/2013.
- Purchase transactions on 5/16/2013, 5/24/2013, 5/30/2013 and 6/6/2013 totaling \$16,393,000 where the bid sheets had no signature/approval by the County Treasurer, or designee, as required in the investment policy.
- One purchase transaction on 3/1/2013 totaling \$5,000,000 had no bid sheets on file.
- One purchase transaction on 1/30/2013 totaling \$5,000,000 where the broker selected had a second opportunity to submit a lower price after the other two brokers submitted a bid.

*Criteria:* In accordance with 1.19.6.119 NMAC, Investment File, records concerning investment of County funds are retained for six years. The records may include the following information: firm name and address, trade date, settlement date, account number, investment description, investment amount, accrued interest, quote sheets, repurchase agreements, accounting information, investment forms, and copy of payment voucher. In accordance with 1.19.6.118, regarding Investment Confirmation, records confirming that transactions between the treasurer and the broker have been completed. Confirmation may include firm name and address, trade date, settlement date, account number, initial investment amount, investment description, purchase or sell price, accrued interest, etc. In accordance with Section 30-26-1 (E) NMSA 1978, Tampering with public records, prohibits a person from knowingly removing without lawful authority any public record or public document belonging to or received or kept by any public authority for information, record or pursuant to law.

Per the County Treasurer's office investment policy "when securities are being purchased or sold, the County Treasurer will obtain a minimum of two bids, however when both bids for purchases are determined to be good choices for the County, then both bids may be accepted. Bid evaluation can be based on price, yield, liquidity, call date, service, and/or any combination of the five mentioned, which would benefit the needs of the County. Purchase may be made at the County Treasurer's discretion and documented after purchase is complete. The County Treasurer shall record all bids and related details of the transaction in a permanent investment transaction record. All investment trades shall be signed by the County Treasurer and co-signed by a Deputy County Treasurer or the Investment Officer."

*Effect:* Purchase transactions totaling \$907,635,000 may not have been in the best interest of the County. In addition, the former County Treasurer may be guilty of a fourth degree felony if found to be in violation of Section 30-26-1 for removing records without lawful authority to do so.

*Cause:* The former and current Treasurer did not consistently apply the requirements for investment file records and internal control requirements. In addition, prior to 12/1/2011, the former County Treasurer was maintaining files at an off-site location outside of the custody and control of the County. The storage of the files at this off site location was not an authorized storage facility nor designated disaster recovery site. As a result, some documentation needing to be included in the investment file was not filed.

*Recommendation:* We recommend the County Treasurer implement the controls to ensure compliance with internal policies and procedures and administrative code for investment file documentation. All

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files should be complete and contain all required information to accurately reflect the decision made behind the transaction. In addition, all records should be maintained in the County Treasurer's offices.

*Management Response:*

*The Treasurer's Office will follow the State Statutes and Regulations required for the Investment Files. NMAC 1.19.6.119. The Treasurer's Office will ensure all records are maintained in a fashion that will provide public confidence that all statutory, code, policies, and regulatory requirements were complied with.*

**2014-002 Investment Transactions-Prudent Person (Significant Deficiency)**

*Condition:* During testing of active investment transactions, we found that the former County Treasurer authorized questionable investment transactions. Specifically, we noted the following:

- One instance where the former County Treasurer entered into a ZERO COUPON Bond for \$5,000,000. Zero coupon bonds do not pay interest during the life of the bond causing prices to fluctuate more than other types of bonds in the secondary market.
- One instance where the former County Treasurer sold an investment for \$5,000,000 and then sold the same investment a second time. To cover the second sale, the former County Treasurer made a subsequent purchase to cover the transaction. Thus, the sell date was prior to the purchase date for the \$5,000,000 transaction.

*Criteria:* 6-8-10-NMSA 1978, "Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived." Per the treasurer's office investment policy, "the Bernalillo County Treasurer shall establish a system of internal controls governing the administration and management of the investment portfolio, which shall be reviewed annually by the Investment Committee. The controls shall be designed to prevent losses of County assets arising from fraud, error, misrepresentation, conflicts of interest, or imprudent actions and mitigate losses due to unanticipated market changes."

In accordance with section 6-10-36(C) NMSA 1978, requires public money to be placed in interest-bearing deposits in banks and savings and loan associations and it shall be equitably distributed among all banks and savings and loan associations having their main or staffed branch offices within the geographical boundaries of the governmental unit that have qualified as public depositories by reason of insurance of the account by an agency of the United States or by depositing collateral security or by giving bond as provided by law and that desire a deposit of public money pursuant to this section.

*Effect:* The former County Treasurer placed the County at risk by entering into unfavorable transactions.

*Cause:* The former County Treasurer did not consistently perform adequate due diligence when selecting offers.



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*Recommendation:* We recommend the Board of Finance and County Treasurer ensure adequate due diligence when selecting offers to ensure there are no over expenditures of taxpayer funds. All supporting documentation should be completed at the time of the transaction and maintained in the investment file including the bid sheets. In addition, the policy and procedures should be updated to include more strategic trading in order to alleviate overpaying for investments and the Investment Committee should review in detail the purchases entered into by the County Treasurer.

*Management Response:* The zero coupon was purchased at 1,576,950 on 10/22/10 and sold on 11/4/10 for 1,587,650 for a profit of \$10,700.

*The following actions have been taken. On April 1, 2014 the Board of Finance approved the Treasurer's Investment Policy. Open market security transactions and all securities shall be executed at a price most advantageous to the County utilizing an electronic trading platform. Additionally, the County will no longer purchase zero coupon bonds or short sale investments. These restrictions will be included as ineligible securities in the next revision of the Investment Policy, which is required to be reviewed annually.*

**2014-003 Calculation of County's Cash Flow (Material Weakness)**

*Condition:* The County Treasurer's office has not established adequate procedures to determine its cash flow needs and did not make prudent investment decisions that maintained the liquidity necessary to meet the County's daily cash requirement. In discussion with the former Country Treasurer, the criterion used was to maintain six months' worth of operating expenses in readily available holdings. However, review of existing investments shows that the majority of the investments are in long-term holdings.

During the period of July 1, 2010 through March 31, 2014 based on the investment maturity dates, purchases totaling \$356,021,000 were made for certificates of deposit and investments with a maturity date of 5 years or less. Purchases totaling \$918,916,000 were made for investments with a maturity date of 6 to 27 years and are not available for current operating needs. In addition, the County had \$16,681,279 in repurchase agreements with maturity dates greater than 25 years. The following table summarizes the active investments by maturity.

<b>Investment Period</b>	<b>Amount</b>
Certificates of Deposit	\$ 221,336,000
5 years or less	134,685,000
6 years to 10 years	197,483,000
11 years to 15 years	367,148,000
16 years to 20 years	344,650,000
More than 20 years	9,635,000
Repurchase	16,681,279
<b>Total</b>	<b>\$ 1,291,618,279</b>

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In October 2013, the Investment Committee ceased meeting while a new investment policy was being drafted. At the same time, the County Finance Division determined the amount of cash needed to meet the operational needs and hired a financial advisor to assist in the restructuring of the investment portfolio.

*Criteria:* The investment policy requires the County Treasurer to maintain the liquidity necessary to meet the County's daily cash requirement. In addition, the policy requires the County's investment portfolio to remain sufficiently liquid to enable the County to adequately meet all its day to day operation requirements. Further, the policy references 6-8-10 NMSA 1978, which relates to investments being in accordance with the prudent investor rule set forth in the Uniform Prudent Investor Act 45-7-6 NMSA 1978.

*Effect:* As a result, the amount of cash needed for immediate foreseeable needs was not adequate. In order to bring the County into a position of having adequate cash flow to meet operating needs and maintain the liquidity to meet cash requirements, it sold investments during February, March and April 2014 and experienced a \$17,082,183 dollar loss.

*Cause:* The former and current County Treasurers were not utilizing all the information necessary in determining the cash flow needs and entered into many long-term callable investments. These investments were not advantageous to the County due to rising interest rates. As rates rose, the issuer did not call the bonds, resulting in a decrease to the fair value of the investments. Neither Treasurer gave adequate consideration to the investments not being called and did not use proper judgment in considering future interest rate fluxuations.

*Recommendation:* Due to the inability of the County Treasurer's office to adequately determine the County's cash flow needs, it is in the best interest of the County Treasurer to have resources available to assist him in making this determination. This could include continuing with the advisor and/or having the County Treasurer's office accounting staff report to the Finance Division, provided that legal requirements are met.

In addition, we also recommend the County Treasurer, in conjunction with the Investment Committee, structure investment maturities to meet on-going cash flow needs to protect tax dollars in the best interest of the County.

*Management Response:*

*The procedure to determine the cash flow needs of Bernalillo County is a joint effort between the Treasurer's office, the Accounting department, and Enterprise Resource Planning (ERP).*

*The following actions have been taken to address the observation. The Treasurer's office and the County's accounting department have worked together to improve cash projection reporting. A unified cash flow projection report was designed to include laddered investments and a reserve of short-term investments needed for liquidity; this report is being implemented into our accounting system for easy accessibility and reliability.*

*On April 1, 2014 the Board of Finance approved the Treasurer's Investment Policy that states the*

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*Treasurer shall maintain at least fifteen percent (15%) of the annual county budget in maturities thirty (30) days or less.*

*Please see Investment Policy: Section VIII-Investment Parameters/B.-Maturity Restrictions/2-Maturity Limits for the Liquidity Component.*

*This minimum liquidity requirement should ensure the county can meet all of its day to day operational requirements.*

*In addition to requiring a certain level of liquid investments in the portfolio, the new policy also dictates governance and reporting within the new policy guidelines. In its regularly scheduled meetings, the investment committee will review the cash flow, as presented by finance and treasury department staff. A continuously updated cash flow report will be a standard agenda item during quarterly investment committee meetings and a standard report to the Treasurer on a monthly basis.*

*Please see Investment Policy: section Section V. Controls / G. Investment Committee / 2. Duties and Section IX-Reporting/A.-Specific Reporting Requirements.*

**2014-004 Open Meetings Act (Significant Deficiency)**

*Condition:* During our review of the Investment Committee Meeting Minutes, we noted that there were no agendas for the February 24, 2011, April 21, 2011, June 30, 2011, October 27, 2011, and December 1, 2011 meetings. We also noted that the December 22, 2010, October 27, 2011, and December 19, 2013 meeting minutes were not approved. There was one instance for the October 30, 2013 meeting where there was no evidence that draft minutes were kept on file and one instance where the minutes did not identify the location for the July 25, 2013 meeting. In addition, the meeting minutes for the July 29, 2010 meeting was altered over one year later to indicate the investment policy had been reviewed by the Investment Committee, in preparation for the annual audit.

*Criteria:* Section 10-15-1(F), NMSA 1978 states that "Meeting notices shall include an agenda containing a list of specific items of business to be discussed or transacted at the meeting or information on how the public may obtain a copy of such an agenda. The board, commission or other policymaking body shall keep written minutes of all its meetings." Section 10-15-1(G), NMSA 1978 "Minutes shall not become official until approved by the policymaking body." Further, Section 10-15-1(G), NMSA 1978 states that "...the policymaking body shall keep written minutes of all its meetings. The minutes shall include at a minimum the date, time and place of the meeting, the names of members in attendance and those absent, the substance of the proposals considered and a record of any decision and votes taken that show how each member voted. All minutes are open to public inspection. Draft minutes shall be prepared within ten working days after the meeting and shall be approved, amended, or disapproved at the next meeting where a quorum is present." Finally, Section 30-26-1, NMSA 1978, states that tampering with public records consists of knowingly altering any public record without lawful authority and knowingly falsifying or falsely making any record or file.

*Effect:* In addition to not being in compliance with Section 10-15-1, NMSA 1978, the County Treasurer's office and Investment Committee are acting in a manner that is less than transparent and accountable to

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the County. In addition, the former County Treasurer may be guilty of a fourth degree felony if found to be in violation of Section 30-26-1 for altering and falsifying meeting minutes.

*Cause:* The former and current Treasurers believe that as the Investment Committee is not making decisions that the meetings are not subject to the stated criteria. However, the Committee is making decisions by approving investment brokers and the investment policy, and should be approving overall investment decisions.

*Recommendation:* We recommend the County implement procedures to ensure compliance with Section 10-15-1, NMSA 1978 including documenting the meeting agendas, the decisions reached during the meetings, approval of meeting minutes, and minutes of every meeting. The meeting minutes should be posted within ten working days after the meeting. The minutes should be approved at the following meeting and under no circumstances should changes be made to those minutes.

*Management Response:*

*The County adopted a revised investment policy on April 1, 2014. Part of this new investment policy establishes a new Investment Committee; see Section IV-Controls/G. Investment Committee. This new Investment Committee will act in compliance with section 10-15-1, NMSA 1978 where applicable.*

**2014-005 Procurement / Related Parties (Significant Deficiency)**

*Condition:* During our test work of procurement and/or related party contracts we noted the former County treasurer entered into one contract with a related party. Specifically, we noted the following:

In December 2012, the former County Treasurer contracted with a related party totaling \$15,175 after the Deputy County Manager of Finance and County Manager specifically indicated the contract should be cancelled and not entered into. While the Deputy County Manager of Finance directed the contract was to be cancelled in May 2012 and the County Manager met with the former County Treasurer and stated the former County Treasurer should not enter into the contract, the former County Treasurer did so anyway. In fact, the contract was approved by a designee while the Deputy County Manager of Finance and County Manager were out on vacation and after the former County Treasurer was instructed not to enter into the contract. The owner of the business and vendor of the County Treasurer's office is also an appointed citizen member of the County Treasurer's investment committee by both the former and current County Treasurer. The vendor was Treasurer for two of the former County Treasurer's campaigns, in 2004 and in 2008, and contributed \$100 to the current County Treasurer's campaign in 2012.

The vendor is also a registered Director, along with the former County Treasurer and the former County Treasurer's wife, for a nonprofit organization. The nonprofit provides educational assistance to one disadvantaged high school graduate each year. We noted a campaign disclosure form was signed to show no more than \$250 was contributed to public officials during this time. We also noted a conflict of interest statement was signed but no mention of this

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relationship was disclosed by the vendor.

*Criteria:* Per the County Treasurer's office investment policy "All persons involved either directly or indirectly in the County investment program shall refrain from activities that give the appearance of conflict of interest."

*Effect:* The County may have paid more than necessary for services.

*Cause:* The former County Treasurer elected to enter into the contract despite County Management direction to not enter into the contract.

*Recommendation:* We recommend the County Treasurer's office review and implement procedures as necessary to ensure they are in alignment with the updated investment policy. In addition, the County should review all contracts entered into by the County Treasurer's office to determine if any contracts should be cancelled and reopened to ensure the County Treasurer's Office has participated in open and competitive contracting practices, and is transparent and accountable in its dealings.

*Management Response:*

*The County will implement sufficient internal controls to reduce the likelihood of this recurring in the future.*

*In addition, the Treasurer will follow the guidelines set forth in the Investment Policy dated April 1, 2014. The Treasurer's office will be more diligent to ensure that there are no conflicts of interest and that the proper documents are completed when necessary. Applicable forms have been created and are being reviewed by County Legal to ensure all persons involved either directly or indirectly in the County investment program shall refrain from activities that give the appearance of conflict of interest. In addition, current required Standards of Conduct will be followed:*

- *The Bernalillo County Code, Code of Conduct, 2-126 to 2-139;*
- *The Governmental Conduct act, NMSA §§10-16-1 to -18;*
- *The Gift Act, NMSA 1978 §§10-16B-1 to-4; and*
- *The Procurement Code, NMSA 1978 §§ 13-1-28 to 199*

**2014-006 Vendor Approval Process (Significant Deficiency)**

*Condition:* During our test work of transactions with brokers/dealers, we noted that while the Investment Committee approved Brokers, Dealers, and Banks, they did so based on incomplete information. The brokers/dealers submitted incomplete information to the former County Treasurer in eight instances and the current County Treasurer in one instance, who in turn submitted the incomplete information to the Investment Committee for approval. Specific observations include the following:

Under the former County Treasurer, incomplete information was submitted to the Investment Committee for review and approval as follows:

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- Four instances where the broker/dealer had indicated to see attached documentation; however the attachment did not exist.
- Four instances where the broker/dealer did not complete the questionnaire. Information missing included providing four references and indicating the types of investments in which they participated.
- One instance where the information provided by the broker was not on the standard form.

Under the current County Treasurer, incomplete information was submitted to the Investment Committee for review and approval as follows:

- One instance where the broker/dealer had indicated to see attached; however the attachment did not exist and the broker/dealer did not indicate the types of investments in which they participated.

*Criteria:* Per the investment policy, "The Treasurer shall use only Brokers, Dealers, and Banks accepted and approved by the investment committee."

The policy further states "the brokers used shall be licensed dealers and shall bid on a competitive basis." In addition, "The selection criteria are: the firm must be registered as a dealer under the Securities Exchange Act of 1934, the firm must be a member of the National Association of Security Dealers, the firm and assigned broker must have been engaged in transacting trades in U.S. government and fixed income securities for at least the immediately preceding five consecutive years and have managed assets of at least 100 million dollars." As noted on the Broker/Dealer questionnaire, the qualified broker/dealer update is required by February 15<sup>th</sup> of each year.

*Effect:* The County Treasurer's office could be entering into transactions with broker/dealers who are not qualified and thus place the County at risk of loss of its financial resources.

*Cause:* The County Treasurer's office did not submit complete information to the Investment Committee for their review and approval and in turn, the Investment Committee did not perform due diligence when approving brokers.

*Recommendation:* We recommend the County Treasurer's office further develop and implement controls to ensure compliance with internal policies and procedures over broker/dealer selections. At a minimum, the following should be performed:

- Obtain complete background information on the broker/dealer.
- Present complete broker/dealer packages to the investment committee for approval.
- Monitor broker/dealer results against benchmarks on a regular basis.
- Rotate broker/dealers.

We also recommend the investment committee perform due diligence when reviewing and approving broker/dealer applications.

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*Management Response:*

*The following actions have been taken to address the deficiency. On April 1, 2014 the Board of Finance approved the Treasurer's Investment Policy that stated the Treasurer with the advice and consent of the Board of Finance shall approve all authorized brokers and dealers. The broker/dealer qualifications in the approved investment policy include:*

- *Broker-dealer must be a registered dealer pursuant the Uniform Securities Act of NM,*
- *Broker-dealer must be registered with the financial industry regulatory authority (FINRA),*
- *Broker-dealer must have a minimum of five (5) years of current and continuous employment history involving fixed income securities and*
- *Must have a FINRA series 7 license or equivalent certification.*

*Applicable forms have been created and are being reviewed by County Legal to ensure all persons involved either directly or indirectly in the County investment program shall refrain from activities that give the appearance of conflict of interest. In addition, current required Standards of Conduct will be followed:*

- *The Bernalillo County Code, Code of Conduct, 2-126 to 2-139;*
- *The Governmental Conduct act, NMSA §§10-16-1 to -18;*
- *The Gift Act, NMSA 1978 §§10-16B-1 to-4; and*
- *The Procurement Code, NMSA 1978 §§ 13-1-28 to 199*

**OTHER COMPLIANCE MATTERS**

(1) In interviewing former County Treasurer's Office employees and obtaining evidence we noted certain unethical practices performed by the former County Treasurer. The following practices are reported herein for consideration by Bernalillo County management and are not being reported as a non-compliance finding for the examination report of the County Treasurer's office as these particular compliance criteria were not included in our final specified compliance criteria described in Exhibit A. However, the County expanded our scope to include reporting on matters that came to our attention that warrant their attention. Specifically, we noted the following:

NMSA 10-16-3 (A) states that a public officer or employee shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests. Also NMSA 1978 10-16-13.3 states that a business that contracts with a state agency or local government agency to provide financial services involving the investment of public money or issuance of bonds for public projects shall not knowingly contribute anything of value to a public officer or employee of that state agency or local government agency who has authority over the investment of public money or issuance of bonds, the revenue of which is used for public projects in the state. In addition, NMSA 1978 10-16B-3(C) (a section of the Gift Act) states that a state officer or employee shall not solicit gifts for a charity from a business or corporation regulated by the state agency for which the state officer or employee works and shall not otherwise solicit donations for a charity in such a manner that it appears that the purpose of the donor in making the gift is to influence the state officer or employee in the performance of an official duty.

The former County Treasurer was the owner of a 501(c) 3 that annually organized golf tournaments in order to raise money for upcoming elections. We obtained evidence that the former County

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Treasurer may have given preference of Bernalillo County investment purchases to the investors who sponsored the fundraising golf tournament. We obtained copies of three payments from brokers for the fundraiser and the "Approved Brokers List" indicating at least eight brokers were contacted to contribute to the former County Treasurer's golf tournament.

In addition, we also noted preference was given to brokers when purchasing investments during fiscal years 2011-2013. In 2011, of the \$396 million invested, over \$314 million was invested with seven brokers out of 15 brokers authorized with the County. In 2012, of the \$384 million invested, almost \$315 million was invested with four brokers out of 15 brokers authorized with the County. In 2013, of the \$241 million invested, over \$168 million was invested with four brokers out of 9 brokers authorized with the County. Over the last 3 years, there was one broker who worked for two different brokerage firms, where the County treasurer's office invested \$217 million.

*Management Response:*

*See management response to 2014-005 Procurement / Related Parties (Significant Deficiency)*

*The County Treasurer and Board of Finance adopted a new investment policy on April 1, 2014, which addresses trading controls, seeking best execution by trading on an electronic platform and managing broker/dealer relationships.*

*The following sections of the newly adopted policy specifically address these topics:*

*Section III. Standards of Care / C. Ethics and Conflicts of Interest*

*Section IV. Controls / C. Authorized Brokers-Dealers*

*Section IV. Controls / E. Competitive Transactions*

*Section IV. Controls / F. Internal Controls*

*Section IV. Controls / G. Investment Committee / 2. Duties*

*Given the newly adopted policy stating required controls and standard of care, the County believes that the issue of properly managing broker/dealer relationships and getting best execution on trades has been addressed.*

- (2) Current and former County Treasurer Office employees performed non-County administrative tasks for the former County Treasurer for his personal fundraising golf tournament and personal errands. For example, one current Treasurer Office employee reported vacation time to work on the former County Treasurer's golf tournament. However, on September 14, 2011 the same individual appears to have received comp time in lieu of taking vacation for the time spent working on the golf tournament. The comp time is notated as "CT-GT" with a handwritten note "comp time - golf tournament". In addition, one employee performed personal errands for the former County Treasurer including picking up supplies for the prior County Treasurer's car washing business, transporting the prior County Treasurer's grandchild and driving the prior County Treasurer and his wife to/from the office or home, , and the airport for non-county business all on County time.

*Management Response:*

*The Treasurer's Office will follow the guidelines set forth by Bernalillo County and be more diligent*



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*in ensuring that there are no future conflicts of interest and that the proper documents are completed when necessary.*

- (3) Some property tax overpayments from tax year (November 1 through October 31) 2005-2012 have not been reimbursed to property owners. According to the property owner agreement, payments received on account will not be refunded or returned except as required by law. Excess funds remaining in an account after payment of property taxes will (1) be applied toward future property taxes or (2) be returned to the taxpayer in accordance with NMSA 1978, Section 7-38-38, which states:

“A refund of the amount in excess shall be made to the taxpayer if either of the following conditions are met: 1) a written request for the refund is made by the taxpayer and received by the county treasurer within sixty days of the date the excess payment is received by the County Treasurer; or (2) the County Treasurer, on his own initiative, determines by June 30 of the year following the year for which taxes are imposed that an excess payment has been made.”

During interviews, staff stated they were instructed by the former County treasurer not to notify property owners of any overpayments. While it may not be the explicit responsibility of the County Treasurer’s Office to notify the property owner of an overpayment, the owner wouldn’t be able to request a refund if they are unaware of the credit. The amount of overpayments not reimbursed to property owners over the previous eight tax year’s totals \$100,258.78. There are 543 accounts with a credit that range from \$1.00 to over \$3,579.76.

The following table summarizes the overpayments by year:

<b>Tax Year</b>	<b>Inclusive Dates</b>	<b>Unreimbursed Overpayment Count</b>	<b>Unreimbursed Overpayment Total</b>
2005	11/01/2005 - 10/31/2006	18	\$ 238.34
2006	11/01/2006 - 10/31/2007	23	6,405.49
2007	11/01/2007 - 10/31/2008	33	5,080.29
2008	11/01/2008 - 10/31/2009	48	4,369.35
2009	11/01/2009 - 10/31/2010	33	3,538.77
2010	11/01/2010 - 10/31/2011	62	12,977.99
2011	11/01/2011 - 10/31/2012	109	13,680.45
2012	11/01/2012 - 10/31/2013	217	53,968.10
<b>2005 - 2012 Total</b>		<b>543</b>	<b>\$ 100,258.78</b>

Examples include the following:

- a. April 2007 for \$3,413.93
- b. March 2008 for \$1,324.98
- c. March 2009 for \$817.37
- d. December 2010 for \$823.41
- e. April 2011 for \$2,613.60
- f. December 2012 for \$3,244.06
- g. April 2013 for \$3,579.76

For the 2013 tax year, overpayments total \$1,303,606.53. The overpayments will continue to accumulate through the end of October 2014, at which time, any overpayment in a refund status

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should be applied to the tax bill for 2014. In addition, these overpayment amounts have not been reported under the NMSA Article 8A-Uniform Unclaimed Property Act.

Management Response:

*The amount of \$1,303,606.53 represents all the outstanding overpayments when the report was created. Overpayments are constantly researched and distributed. The amount does not represent a static number meaning that it changes based on ongoing overpayments sent back to the taxpayer and overpayments taxpayers send to apply to the next tax year. The overpayments will continue to accumulate through the end of October 2014 at which time all overpayments will be applied to the 2014 tax bill which will be sent out the first of November 2014.*

*The Treasurer's Office sends out refunds for tax overpayments weekly. Below is a list of the refunds sent out for each fiscal year:*

<i>Fiscal Year</i>	<i># of checks</i>	<i>Amount</i>
<i>2011</i>	<i>701</i>	<i>\$1,847,846</i>
<i>2012</i>	<i>912</i>	<i>\$2,779,855</i>
<i>2013</i>	<i>665</i>	<i>\$1,344,975</i>
<i>2014</i>	<i>469</i>	<i>\$1,436,501</i>

*The Treasurer's office will continue to make every attempt to contact the Property Owner or the entity responsible for creating the overpayment, and refund or apply overpayment towards future Property Taxes in accordance with NMSA 1978, Section 7-38-38.*

*The Treasurer's office will review the Parcels that would fall within NMSA Article 8A-Uniform Unclaimed Property Act, and will initiate the required process for reporting.*

## EXHIBIT A

### SPECIFIED COMPLIANCE REQUIREMENTS

The following compliance criteria were used to perform an examination of the Bernalillo County Treasurer's Office investment transactions for the period July 1, 2010 through March 31, 2014.

#### 1. Investment Confirmations

- a. In accordance with New Mexico Administrative Code (NMAC) Title I, Chapter 19, Part 6 for the Office of the County Treasurer, paragraph 118(1.19.6.118 NMAC), Investment Confirmations, County records confirming transactions between the County Treasurer and the broker have been completed are retained for six years after date of confirmation.
- b. Details of the transactions between the County Treasurer and the broker, such as firm name and address, trade date, settlement date, account number, initial investment amount, investment description, purchase or sell price, and accrued interest, are accurately recorded.

#### 2. Investment Files

- a. In accordance with 1.19.6.119 NMAC, Investment File, records concerning investment of County funds are retained for six years after the close of the fiscal year in which they were created. The records may include the following information:
  - i. Firm name and address
  - ii. Trade date
  - iii. Settlement date
  - iv. Account number
  - v. Investment description
  - vi. Investment amount
  - vii. Accrued interest
  - viii. Quote sheets
  - ix. Repurchase agreements
  - x. Accounting information
  - xi. Investment forms
  - xii. Copy of payment voucher
  - xiii. State Treasurer's validated deposit slip with attached sale transaction, if applicable
  - xiv. Wiring instructions
  - xv. Other information as deemed necessary based on review of the records.

## EXHIBIT A

### SPECIFIED COMPLIANCE REQUIREMENTS

#### 4. Investment Portfolio

- a. In accordance with 1.19.6.120 NMAC, Investment Portfolio Listing, investment portfolio listings include all County investments made by the County Treasurer and are retained for six years after the close of the fiscal year in which they were created. The listings may include the following, as applicable:
  - i. Investment type
  - ii. Funds invested
  - iii. Date invested
  - iv. Date of maturity
  - v. Interest rate
  - vi. Name of bank or holding agency
  - vii. Money amount
  - viii. Unpaid interest income
  - ix. Totals

#### 5. Investment Transactions

- a. The amount recorded in the County's investment files at the settlement date (whether it be for purchases or sales) for each Committee on Uniform Securities Identification Procedures (CUSIP) number for each trade agrees to the market value price on the date of settlement.

#### 6. County Treasurer's Office

- a. Contracts signed for security services were approved by an authorized County employee.
- b. The transactions or investments with the same broker who paid on a settlement between a financial services firm and Harris County, Texas were transacted in an arms-length agreement and no conflicts of interest existed.

#### 7. Cash Flow

- a. Calculations for the County's cash flow needs are performed according the Treasurer Office's financial close procedures.

#### 8. Record Keeping & Accounting Transactions

- a. Collections and distribution of funds for the Tax Increment Development Districts and Public Improvements Districts transactions are tracked and accurately reported.