CHAPTER 6.
Office of the Public Auditor.

2301. Office of the Public Auditor.

There is in the Commonwealth government an office of the Public Auditor to be headed by the Public Auditor. The office of the Public Auditor is established as an independent agency of the Commonwealth government to audit the receipt, possession, and disbursement of public funds by agencies of the Commonwealth government and to perform such other duties as required in this chapter and in the Auditing Act, 1 CMC 7811 et seq.

Source: N.M.I. Const. art. III, 12; PL 3-91, 200.

Commission Comment: PL 3-91, the Commonwealth Auditing Act of 1983, took effect January 4, 1984. PL 3-91, 410 repealed PL 3-63 and portions of PL 1-8 relating to the Public Auditor. This chapter includes portions of PL 3-91 relating to the establishment of the office of the Public Auditor and his or her appointment, duties and powers. For other matters relating to the office and its operations, see 1 CMC 7811 et seq.


(a) The Governor shall appoint the Public Auditor with the advice and consent of each house of the legislature. No person may be appointed Public Auditor unless that person is a certified public accountant and has a minimum of five years experience in accounting or government finance.

(b) The Public Auditor shall be appointed for a term of six years. No person may serve as Public Auditor for more than two consecutive full six-year terms or the balance of an unexpired term plus two full six-year terms.

(c) The Public Auditor may be removed only for cause and by the affirmative vote of two-thirds of the members of each house of the legislature.

(d) If there is a vacancy in the office of the Public Auditor, the Governor shall appoint a temporary public auditor with the same qualifications as required by law for the Public Auditor and the temporary public auditor shall serve until a Public Auditor is duly appointed and confirmed.


2303. Public Auditor: Duties.

(a) Not later than June 30 of each year, the Public Auditor shall transmit to the Governor and to the presiding officer of each house of the legislature the annual report for the previous fiscal year required by N.M.I. Const. art. III, 12. The report shall consist of a financial audit of the General Fund, each trust fund, each other fund of any agency whether or not appropriated, each contract to which any agency is a party, and each grant made or received by any agency. The audit shall cover the receipt, possession, and disbursement of public funds including all liabilities, receivables, and accruals of any agency, all taxes, fees, receipts, and other revenues of any agency, all other financial transactions involving any agency, and any financial statement issued or prepared by any agency. Personal service contracts and prime contracts with employees of any agency shall be audited as part of the regular operations and activities of the agency.

(b) The Public Auditor shall from time to time make such other audits of Commonwealth agencies, activities, contracts, or grants as are possible within the budget provided to the Public Auditor and as the Public Auditor deems to be in the public interest and consistent with this chapter and with the Auditing Act, 1 CMC 7811 et seq.
(c) Upon request of a Commonwealth agency the Public Auditor shall provide an opinion as to whether or not certain practices are in accord with generally accepted accounting principles.

(d) The Public Auditor shall promulgate procurement regulations substantially similar to Commonwealth procurement regulations and shall administer its own procurement function.

Source: PL 3-91, 202; subsection (d) added by PL 12-65, 3 (g).

Commission Comment: With respect to PL 12-65, see the comment to 1 CMC 2305.

2304. Public Auditor: Special Duties to Prevent Fraud, Waste and Abuse of Public Funds.

(a) The office of the Public Auditor shall specially act to prevent and detect fraud, waste and abuse in the collection and expenditure of all public funds. The Public Auditor may audit any transaction involving the procurement of supplies or the procurement of any construction by agencies of the Commonwealth, and the procurement of any supplies and services in connection with such construction.

(b) The Public Auditor may conduct audits and investigations, when necessary, relating to programs and operations involving expenditure of public funds. The Public Auditor may review legislation and regulations relating to programs and operations involving expenditure of public funds and may make recommendations concerning the effect of the legislation or regulation on the prevention and detection of fraud, waste and abuse. The Public Auditor may recommend policies to assist in the prevention or detection of fraud, waste and abuse.

Source: PL 3-91, 203.

2305. Public Auditor: Staff.

(a) The Public Auditor may appoint and remove such employees as he or she deems necessary to perform the duties of the office. These employees may include assistant public auditors, accountants, auditors, financial management analysts, investigators, attorneys, paralegals, secretaries, clerks and the like. All personnel employed by or contracted for by the Office of Public Auditor shall be exempt from the application of the Commonwealth Civil Service Act (1 CMC 8101 et seq.). The Office of the Public Auditor shall set its own compensation, wage and salary scales. The wage and salary scales shall be commensurate with those paid by the Commonwealth requiring comparable education, training and experience. Provided, however, that in order to attract and retain professional staff members and to mitigate the economic impact of the restriction imposed in paragraph (b) of this section, the Public Auditor shall be allowed to set higher compensation rates for certain technical and managerial positions to be determined by the Public Auditor. The higher compensation rates shall be exempt from the salary ceiling established by the Compensation Adjustments Act (1 CMC 8248); provided further that such compensation and salary adjustment schedule shall be approved by the Legislature. The Office of the Public Auditor may provide staff housing or housing allowance as part of its compensation package to its employees. The Office of the Public Auditor shall administer the housing program for its employees.

(b) The Public Auditor may establish supplemental personnel regulations including a code of ethics for the employees of the office. No employee of the Office of the Public Auditor may hold, or be a candidate for, any elective public office while an employee, nor may the employee hold office in any political party or political committee, or participate in any political campaign of any candidates for public office while an employee. No employee may actively engage in any other business, profession, or governmental office.

(c) Notwithstanding the provisions of any other CNMI laws, nonresident workers as defined in 3 CMC 4412(i) are not permitted to work for the Office of the Public Auditor, except to fill a vacant professional
position when no resident applicant for such position is found to be qualified. The Office of the Public Auditor may hire up to one nonresident worker under this subsection.

(d) The Office of the Public Auditor shall still comply with the requirement of 3 CMC 4434(i)(2) to implement a management intern program. The Public Auditor is authorized to hire up to ten additional employees for the management intern program. The Public Auditor may reprogram funds appropriated to its office to fund the salaries and expenses associated with hiring and training the additional employees.

(e) On or before May 31 each year, the Scholarship Office, the Northern Marianas College, and any other CNMI agency overseeing any scholarship program shall provide the Office of the Public Auditor, the Presiding Officers of the Legislature, the Chairpersons of Committees with oversight on education in both House of the Legislature, and the Office of Personnel Management with a list of resident students pursuing college degrees. The list shall be sorted by name and shall show the field of study, number of years in college, and expected year to graduate. The list shall be used by the CNMI Legislature in determining when to pass a law that will cease allowing the Office of the Public Auditor to hire nonresident professionals.

(f) The Public Auditor may, when in his or her judgment it is necessary, delegate any duties and powers to any employees employed by the Public Auditor. The employees shall report their findings for review by the Public Auditor.

Source: PL 9-68, 8, 9 (repealing PL 3-91, 204); repealed and reenacted by PL 12-65, 3; (c) amended by PL 14-30, 2.

Commission Comment: With respect to PL 9-68, see the comment to 1 CMC 2302. PL 12-65, which took effect September 27, 2001, contained short title, purposes, severability, and savings clause provisions. According to PL 12-65:

Section 1. Short Title. This Act shall be called the Commonwealth Auditing Amendments Act of 2001.

Section 2. Purposes. The purposes of this Act are: (1) to extend the exemption granted to the Office of the Public Auditor (OPA) for hiring nonresident professionals beyond September 20, 2000 and until three years after the effective date of this act when at such time as sufficient professionals in the field of accounting or auditing are available locally, (2) to allow the Public Auditor to grant compensation packages beyond the ceiling previously established in the Compensation Adjustment Act (1 CMC 8248) in order to attract and retain professionals and mitigate the effect of the restriction against engaging in any other business, profession, or government office, and (3) to actively involve OPA in monitoring the progress of students receiving CNMI financial assistance (grants and/or loans) in connection with their taking courses for degrees in accounting or auditing. The Legislature further finds that in view of the immense responsibilities placed upon the Office of the Public Auditor the salary of the Public Auditor must be commensurate with such responsibilities and qualifications required for the position. Therefore, this act raises the annual base salary of the CNMI Public Auditor to reflect the prominent policing role of that office.

PL 14-30 was enacted on September 22, 2004, and contained findings and purpose, sunset, severability, and savings clause provisions. While the Commission is charged with codifying only permanent laws of the CNMI, it would be remiss in its duties to not codify a temporary provision with a somewhat lengthy effective period. Of particular interest is the following sunset provision:

Section 3. Sunset. The authorization provided under this Act shall expire five years after the effective date of this Act.


(a) The Public Auditor may obtain the services of independent certified public accountants, qualified management consultants, or other professional persons, as the Public Auditor deems necessary to assist in carrying out his or her duties. Independent specialists shall be used for any audit involving the office of the Public Auditor, or with respect to which the Public Auditor or the office of the Public Auditor has a conflict of interest, including an audit of any agency, contract, or grant for which the Public Auditor has had management responsibility or in which the Public Auditor was employed:

(1) During the two years preceding the time period covered by the audit; or
(2) During the two years preceding or subsequent to the audit time period.
(b) If the Public Auditor fails to schedule an audit so that it can be completed in time to comply with any applicable law or the terms of any loan, grant, financial assistance, or contract, or if the Public Auditor fails to commence, conduct, or complete any audit as required by law, the person or agency concerned may, upon the approval of the Governor and Public Auditor and subject to the availability of funds, enter into a contract with any independent certified public accountant for the purpose of conducting the audit. The audit shall be conducted as closely as possible to the standards adopted by the office of the Public Auditor.

**Source:** PL 3-91, 205.

### 2307. Establishment of Coordinating Group.

(a) An Interagency Audit Coordinating Advisory Group (Coordinating Group) is established consisting of the presiding officer and minority leader of each house of the legislature, the Director of Finance, and the Special Assistant for Planning and Budgeting.

(b) The coordinating group shall not be deemed an agency for purposes of this chapter, the Auditing Act (1 CMC 7811 et seq.), or any other law, but shall meet or confer as necessary to perform the functions assigned to it by this chapter and the Auditing Act.

(c) The coordinating group shall review all audit reports of the Public Auditor, and the Public Auditor shall discuss the manner in which the Public Auditor's recommendations can be implemented with the assistance of the members of the coordinating group. The coordinating group shall recommend to the Governor and to the legislature any changes in law or regulations which it finds necessary or desirable as a result of its work with the Public Auditor.

**Source:** PL 3-91, 209.

**Commission Comment:** With respect to the references to the Director of Finance and the Special Assistant for Planning and Budgeting, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC 2001.

### 2308. Annual Report.

The Public Auditor shall report on his or her activities and findings to the legislature and the Governor at least once every calendar year, and this report shall be made public promptly.

**Source:** PL 3-91, 210.

### 2309. Public Auditor Compensation.

Notwithstanding any provision of law, the Public Auditor shall receive an annual salary not to exceed $100,000.00.

**Source:** PL 12-65, 4.

**Commission Comment:** With respect to PL 12-65, see the comment to 1 CMC 2305.

### 2310. Reprogramming Authority.

Notwithstanding any other provision of law to the contrary, the Public Auditor is authorized to reprogram funds appropriated to its office to accommodate the increase in the Public Auditor's salary pursuant to Section 2309 of this Chapter.

**Source:** PL 12-65, 5, modified.

**Commission Comment:** With respect to PL 12-65, see the comment to 1 CMC 2305.