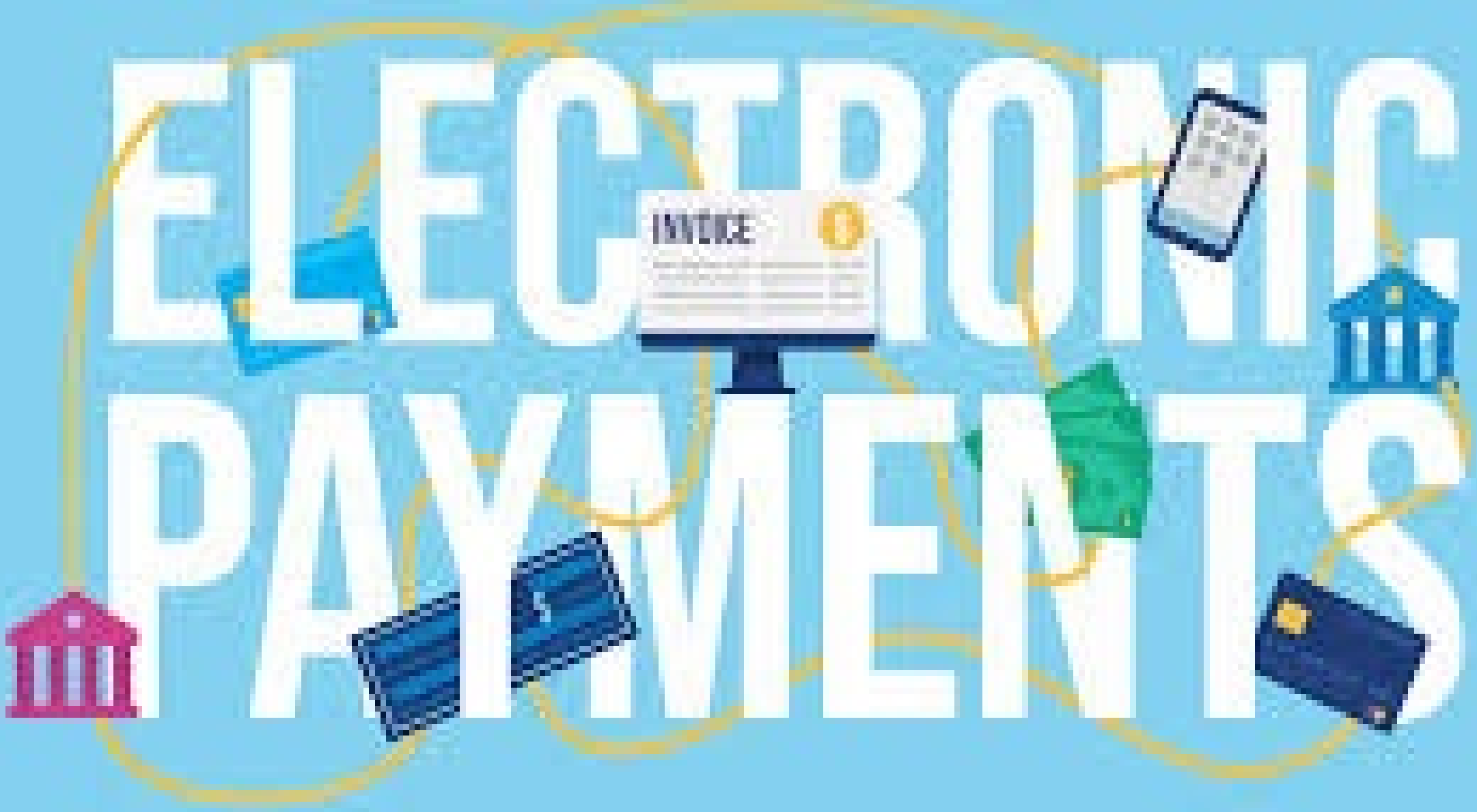




Consideration of Lea County Resolution No. 22-MAY-120R Adopting Procedures for the Acceptance of Payments by Credit Card, Debit Card or Other Electronic Means





**LEA COUNTY BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY FORM**

LCBCC Meeting Date: Thursday, May 26, 2022

Submit this summary form & all attachments to the Finance Director clow@leacounty.net & cc the Community Engagement Manager sstout@leacounty.net; Public Information Officer mrussell@leacounty.net and County Manager mgallagher@leacounty.net by: **Tuesday, May 17, 2022**

County Manager Approval required for all time sensitive issues that do not meet the above deadline.

DATE SUBMITTED mm-dd-yyyy: 05/20/2022	SUBMITTED BY Name, Title, Dept: Susan Marinovich, County Treasurer
SUBJECT: Adopt Procedures for the Acceptance of Payments by Credit Card, Debit Card or Other Electronic Means	ATTACHMENT(S): Resolution Policy
NO. OF ORIGINALS FOR SIGNATURE: 1 Resolution	ACTION REQUESTED: Action Item
BUDGET LINE ITEM NUMBER:	FISCAL BUDGET YEAR:
STRATEGIC PLAN Implementation of 5 Year Strategic Plan:	
SUMMARY: Adopt Procedures for the Acceptance of Payments by Credit Card, Debit Card or Other Electronic Means	
Requested Items Needed for Presentation Easels/Laptop/Projector/Etc.: Easel <input type="checkbox"/> If checked, how many: Laptop <input checked="" type="checkbox"/> Projector <input checked="" type="checkbox"/> Other: <input type="checkbox"/>	See Additional Summary Attached <input type="checkbox"/>
SUBMITTER'S RECOMMENDATION(S): Approve Policy	Submitter's Signature Department Director, Etc.
FINANCE REVIEW Fiscal Impact/Cost:	Reviewed by Finance Director
LEGAL REVIEW: (Note: Travel does not need legal review)	Reviewed by County Attorney
COUNTY MANAGER REVIEW:	Approved by County Manager to be Placed on Agenda
Item No. 0202 RECORDING SECRETARY'S USE ONLY ~ COMMISSION ACTION TAKEN	
Approved: _____ Resolution No. 22-MAY-120R Continued To: _____	Denied: _____ Policy No. _____ Referred To: _____
Other: _____ Ordinance No. _____ Comments: _____	

STATE OF NEW MEXICO
COUNTY OF LEA
RESOLUTION NO. 22-MAY-__R

**A RESOLUTION ADOPTING PROCEDURES FOR THE ACCEPTANCE OF PAYMENTS BY CREDIT
CARD, DEBIT CARD OR OTHER ELECTRONIC MEANS**

WHEREAS, the Board of County Commissioners of Lea County is tasked to represent and address the needs of its residents; *and*

WHEREAS, the passage of N.M.S.A 6-10-1.2 allows local governments to accept payment by credit card, debit card or electronic means of any amount due under any law or program; and

WHEREAS, the citizens of Lea County have requested the ability to pay by credit card or debit card and also make payments on-line; and

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Board of County Commissioners of Lea County does hereby approve these procedures, attached and incorporated herein as Exhibit A.

BE IT FURTHER RESOLVED that the Commission Chair and/or County Manager may finalize and sign any agreements consistent with the terms of this resolution.

PASSED, APPROVED AND ADOPTED on this 26th day of May, 2022, by the Lea County Board of County Commissioners in an open meeting in Lovington, New Mexico.

LEA COUNTY BOARD OF COUNTY COMMISSIONERS

Dean Jackson (District 1), Chair
Voted: Yes No Abstain

Gary G. Eidson (District 3), Vice Chair
Voted: Yes No Abstain

Rebecca Long (District 2), Member
Voted: Yes No Abstain

Jonathan Sena (District 4), Member
Voted: Yes No Abstain

Pat Sims (District 5), Member
Voted: Yes No Abstain

ATTEST: Keith Manes
 Lea County Clerk

**APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:**

By:

Teri Davis, Deputy Clerk

John W. Caldwell, County Attorney

LEA COUNTY

POLICY FOR THE ACCEPTANCE OF DEBIT/CREDIT CARDS OR ELECTRONIC TRANSFER FOR PAYMENTS OF PROPERTY TAXES AND OTHER SERVICES

Issue Date: May 12, 2022

This policy applies to all Lea County departments that accept or may accept debit or credit cards for payment of property taxes and other services.

Section 6-10-1.2 NMSA provides that a local governing body may accept payment by credit card or electronic means and may charge a uniform convenience fee to cover the approximate costs imposed by a financial institution that are directly related to processing a debit/credit card or electronic transfer transaction.

Debit/Credit Card customer information is not subject to Public Records Disclosure. Debit/Credit Card customer information will not be subject for use for commercial purposes.

A. Authorization to Open all Credit and Debit Card Accounts

The Lea County Treasurer will be consulted regarding any new and/or changes dealing with all debit card accounts and merchant credit card accounts.

B. Accepting Debit/Credit Card or Electronic Transfer Transaction Subject to Convenience Fee

Lea County will accept payment of property taxes and other services by debit/credit card or electronic transfer transaction with the provision that Lea County will not accept payment by debit/credit card or electronic transfer without charging a convenience fee to the customer to do so.

C. Definitions

1. "Automated Clearing House" or "ACH" means an association of depository institutions that process financial transactions electronically through the Federal Reserve Bank.

2. **"Convenience Fee"** means a fee that is charged to a customer for the convenience of making an electronic payment. A convenience fee charged to a customer typically covers all or a portion of a payment vendor's transaction costs, as well as any other additional fees that are charged by an agency to recover direct costs associated with an electronic payment.
3. **"Credit Card"** means a card indicating that the holder named on the card has obtained a revolving line of credit from the financial institution issuing the card up to a certain dollar amount valid to a specified date shown on the card. A credit card may be used to pay for goods and services from merchants or organizations participating in the corresponding credit card program.
4. **"Debit Card"** means a card indicating that the holder named on the card has an open account in a financial institution shown on the card that the holder named on the card is authorized to pay for purchases of goods and services from participating merchants so long as the account is valid and has adequate funds to cover the cost of either goods or services, or both, at the time of the transaction.
5. **"Customer"** means a person who is purchasing and/or paying Lea County services or property taxes with an electronic payment, such as a credit card, debit card or electronic check.
6. **"Electronic Check" or "e-check"** means an ACH debit that is initiated by the customer or agency on the internet against an open account in a financial institution that is authorized for use to pay for purchases of goods and services from participating merchants so long as the account is valid and has adequate funds to cover the cost of either goods or services, or both, at the time of the transaction. This is also known as an internet check.
7. **"Electronic Payments"** means any financial transaction by which funds are transferred to Lea County through any type of electronic payment option or method. The electronic payment options include, but are not limited to; Internet payment processing, point-of-sale payment processing, and interactive voice response (telephone payments). The methods of payment include, but are not limited to: automated clearing house (ACH), credit cards, debit cards, and ACH debit processing.
8. **"Electronic Payment Services"** means any service provided by a vendor who acts as an intermediary in processing an electronic payment, including, but not limited to: merchant banking services, credit card payment processing, ACH debit processing, and internet payment gateway services. Depending on how contracts with third party vendors are established, electronic payment services may be coordinated by a single vendor or multiple vendors.
9. **"Electronic Payment Processing Protocol"** means the standard processes used by Lea County when accepting electronic payments from customers, including, but not limited to, contracts with financial service providers and business procedures.

10. **"Interactive Voice Response System"** (IVR) means a system that allows users to pay for services over the telephone or other audio-signal carrier using a credit card.
11. **"Internet Payment Gateway Service"** means a service provided by a vendor that directs an internet payment transaction to the appropriate third-party payment processor who facilitates the transfer of funds from a specific financial institution.
12. **"Merchant Banking Service"** refers to the designated bank or banking service that processes an electronic payment.
13. **"Payment Vendor"** means a service provider who is involved with the electronic payment transaction, including, but not limited to; merchant bank, credit card issuer, credit card association, internet payment gateway, ACH or credit card payment processor.
14. **"Personal Financial Information"** means the information provided by the customer in the course of completing a payment transaction with Lea County through an electronic transfer of funds, including, but not limited to credit card number, debit card number and bank account number.
15. **"Point-of-Sale"** or POS is a payment option that performs a real-time payment authorization of a customer's account when the customer presents their credit card (or other payment method) in-person at the time of sale.
16. **"Transaction Fee"** means the same as "transaction cost" and refers to the cost incurred by a payment vendor for executing an electronic payment. If an agency passes all or a portion of this transaction cost on to the customer, then the resulting fee to the customer is typically called a "convenience fee" (see definition above).

D. Policies

Lea County may accept electronic payments for property taxes and other services.

Lea County must comply with the electronic payment processing protocol and procedural steps as set forth in these administrative policies and procedures.

1. Electronic Payment Processing Protocol and Privacy

Lea County, with technical assistance and equipment if necessary, shall establish and maintain the protocol for electronic payment processing, including, but not limited to, contracts for electronic payments, convenience fees, and standard business processes and procedures.

- a. Lea County shall not store a customer's personal financial information in a database accessible to the public.

2. Contracts

- a. The Lea County Treasurer, will assist with establishing and administering contracts with vendors for the acceptance and processing of electronic payments, including, but not necessarily limited to: merchant banking services, internet payment gateway services, and third-party electronic payment processors.

3. Convenience and Transaction Fees

- a. A convenience fee greater than the cost of a payment vendor's transaction fee may be charged to the customer for an electronic payment. Convenience fees may be calculated to recover all of a payment vendor's transaction costs, as well as any additional direct costs borne by Lea County.
- b. Use of a convenience fee and the methodology used in calculating it must be in accordance with the contracts Lea County has established with its payment vendors.
- c. The current convenience fee for the Lea County Treasurer is 2.45% or a \$2.00 minimum per transaction. The Lea County Event Center and Fairgrounds have a set fee of \$3.00 per transaction and DWI is 2.2% per transaction.

E. Procedures

1. Lea County employees may obtain information from the Lea County Treasurer on its electronic payment processing protocol, contracts for electronic payments, transaction fee structure and standard business processes and procedures.
2. The Lea County Departments processing credit/debit card systems will provide to the Lea County Treasurer, information pertaining to set up of accounts which may include, but is not limited to, the following:
 - a. Checking account for electronic payment deposits.
 - b. Merchant bank account and credit card issuer accounts for credit card payment processing.
 - c. Internet payment processing and third-party payment processor accounts.
3. The Lea County Treasurer or its appointed designee is responsible for tracking, researching and recording all credit/debit card transactions or electronic transfer for reconciliation purposes. Subsequently all departments utilizing a credit/debit card system will be responsible for balance and submission of their respective transactions.

4. Acceptance of debit/credit cards or electronic transfer from the internet shall be done in a secure fashion and on a secure system.
5. Debit/Credit card payments will be accepted in person by POS, phone in requests and through the internet payment gateway. Debit/credit card payments will not be accepted by, mail or e-mail.



**New Mexico Department of Finance & Administration
Local Government Division, Budget & Finance Bureau
REQUIRED CHECKLIST FOR ACCEPTANCE OF CREDIT CARDS
AND ELECTRONIC TRANSFERS**

This checklist is intended to assist local governments in complying with Section 6-10-1.2, NMSA 1978 which states *"the local governing body shall adopt procedures, subject to the approval of the department, on the terms and conditions of accepting payments by credit card or electronic transfers". "Department" is the Department of Finance and Administration (DFA).*

Check completed items below, as applicable, and prepare documents as needed.

This signed checklist and supporting documentation must be included with the submission of your local entity's "Interim Budget" due on or before June 1st. Upload all files onto the Local Government Budget Management System (LGBMS) using the "files" tab.

Local Government Entity Contact Information

Entity: LEA COUNTY

Phone Number: 575-396-8642

Entity Contact Name: Susan Marinovich

Email Address: smarinovich@leacounty.net

REQUIRED DOCUMENTATION-Submit as part of the formal request for approval.

A letter addressed to the DFA Local Government Division Director, from the local entity's County Manager, Municipal Mayor or CFO including all the following:

GENERAL INFORMATION

- ☒ The reason the local entity would like to accept credit card payments or electronic transfers.
- ☒ A list of all fees, taxes, or other amounts to be collected from credit card payments or electronic transfers.
- ☒ A statement as to whether the local entity will absorb fees for acceptance of payment cards, or the cardholders will be assessed a convenience or service fee.
- ☒ A statement identifying the payment gateway that will be used to facilitate online credit card payments or electronic transfers.

ATTESTATION THAT THE LOCAL ENTITY WILL:

- ☒ Follow the terms and conditions for payment card acceptance as set out in the Fiscal Agent Agreement. **Include fiscal agent name and agreement effective dates on letter.**

CONTINUED-ATTESTATION THAT THE LOCAL ENTITY WILL:

- ☒ Follow industry guidance, procedures, and rule compliance established by National Automated Clearing House Association (NACHA) for electronic payments and Payment Card Industry (PCI) for credit card payments.
- ☒ Pay all costs associated with the acceptance of payment card services card services, including but not limited to (1) purchases or leases of merchant equipment, as set out in the Fiscal Agent Agreement and any agreement with an approved third-party processor, and (2) any assessment charged by local entity to cover the cost of compliance with PCI data security standards (DSS) and NACHA.
- ☒ Be responsible for tracking, researching, and recording all payment card transactions for reconciliation purposes.
- ☐ N/A If a PCI audit has been completed, please provide a copy of the audit compliance report to DFA.
- ☒ Provide your independent auditor with DFA's approval letter.

CONFIRMATION THAT:

- ☒ Memorandum or other attestation from your local entity's information and technology (IT) which certifies the acceptance of payment cards and electronic transfers are on a secure system, meet current PCI-DSS and NACHA standards, provide proper encryption of account numbers, and customer data is protected. **A copy of the memorandum or PCI Audit must be provided to DFA.**
- ☒ If fees for acceptance of payment cards will be paid by the cardholder, procedures must be developed defining current charges of collected convenience and/or service fees from cardholders. In addition, confirmation that the convenience and/or service fees will be in compliance with Subsection B of 6-10-1.2 which states "local governing body may charge a uniform convenience fee to cover the approximate costs imposed by a financial institution that are directly related to processing a credit card or electronic transfer transaction." **A copy of these procedures must be provided to DFA.**
- ☒ Memorandum or other attestation from the Fiscal Agent-Merchant Service Agreement that the structure and/or procedures for collecting payment cards meet the Fiscal Agent's requirement, complying with the Fiscal Agent Agreement. **A copy of the memorandum or attestation must be provided to DFA.**
- ☒ If the local entity is using a third-party processor, **a copy of the executed third-party processor agreement must be provided to DFA.**

I _____, certify this check list is complete and
Name & Title (must be signed by Mayor or County Manager)

copies of all required documents have been uploaded onto DFA's Local Government Budget Management System (LGBMS) with the local entity's interim budget due on or before June 1st: and

Attest LEA COUNTY will comply with all PCI, DSS
Local Entity's Name

and NACHA Standards, and release The Department of Finance and Administration (DFA), against any claims, suits, or actions of any kind whatsoever for liability, damages, compensation or otherwise brought by anyone on behalf of the Local Entity, including attorney's fees and any related costs.

Signature

Date: _____



DFA
Local Government Division
Director, Donnie Quintana
Bataan Memorial Building, Suites 201-203
Santa Fe, NM 87501

Re: Credit Card Terms and Conditions

Mr. Quintana,

Pursuant to Section 6-10-1.2, NMSA 1978, a local governing body may accept payment by credit card or electronic means of any amount due under any law or program administered by the agency or local governing body. The same statute also states that the local governing body shall adopt procedures, subject to the approval of the department (of finance and administration), on the terms and conditions of accepting payments by credit card or electronic transfer.

Section B of this same statute states that a local governing body may charge a convenience fee to cover the exact fees imposed by the financial institution for the cost of processing a credit card or electronic transfer transaction.

As such, I am writing to notify DFA that Lea County Treasurer's Office is charging a 2.45% or \$2.00 minimum, and a flat \$3.00 fee for the Lea County Event Center, Lea County Fairgrounds and Lea County DWI. These convenience fees are imposed on all credit card transactions that are received over the phone payment system, paid online, or paid over the phone with a County representative. I am also attaching a copy of the Merchant Services Agreement with our fiscal agents, Point & Pay, Select a Seat, and Wells Fargo, which sets out the general terms and conditions of credit card acceptance.

Please let us know if you have any questions.

Thank you,

Mike Gallagher
Lea County Manager

Cc: Brenda Suazo-Giles, Executive Budget Analyst DFA Local Government Division
BrendaL.Suazo-Giles@state.nm.us