

For Immediate Release
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Executive Allocation of Federal Funds in New Mexico

Legal Authority

- **Various courts have ruled that state legislatures do not have authority to appropriate federal funds.**

Objection

Article 4, Section 30 of the New Mexico state constitution states: "Except interest or other payments on the public debt, money shall be paid out of the treasury only upon appropriations made by the legislature."

Response

Apart from the question of whether the state constitution addresses state funds only, the **General Appropriations Act of 2003 addresses receipt of unforeseen federal funds, and cedes authority to the executive for their specific allocation.**

Section 2, paragraph R of the GAA states: "'Unforeseen federal funds' means a source of federal funds or an increased amount of federal funds that could not have been reasonably anticipated or known during the first session of the forty-sixth legislature and, therefore, could not have been requested by an agency or appropriated by the legislature."

GAA Section 3, paragraph I further states: "Pursuant to Sections 6-3-23 through 6-3-25 NMSA1978, agencies whose revenue from unforeseen federal funds...exceeds specifically appropriated amounts may request budget increases from the state budget division. *If approved by the state budget division, such money is appropriated.*" (Italics added)

Counter Objection

The language in the GAA addresses unforeseen federal funds directed to agencies, and not so-called 'block grants' to the state in general.

Counter Response

This is semantic hair-splitting. First, the money *is* being received by a state agency (DFA), and *is* being allocated to and distributed by other state agencies per their approved budget requests. And DFA already has statutory authority to receive and make use of federal funds. Second, had the legislature intended to distinguish between the disposition of agency-specific federal funds and so-called 'block grants,' the latter would have been addressed separately elsewhere in the GAA. They are not.

Federal Approval

- **Department of the Treasury agrees that the governor has the authority to allocate the money without formal legislative approval.**

To qualify, the *Executive* (not the legislature) must certify that:

- The funds will be used for “essential government services”; or
- The funds will be used to cover state costs for complying with a federal mandate; and
- The funds are to be used “for the types of expenditures permitted under the most recently approved budget for the State.”

Around the Nation

- **25 other states allocate this money by the same process** as New Mexico.
- **The National Council of State Legislatures (NCSL) verifies that in New Mexico the executive is the “controlling authority” over the receipt of unanticipated federal funds**; that generally the legislative authority over such funds is “none”; and that New Mexico’s legislature has even limited say over the disposition of unanticipated federal monies *only when a state match is required*. No state match is required under the current circumstance.

Critical Needs of the State vs. Pork Fest

- Projects to be funded represent **critical, time-sensitive needs of the state**.
- It is the intent of the executive to **prevent the “pork fest”** likely were these funds made available to the entire legislature as a whole for distribution.

The governor has consulted with legislative leadership regarding the general intent and targets for these appropriations.