

# NMAC

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Volume:  Issue:  Publication date:  Number of pages:  (ALD Use Only) Sequence No.

Issuing agency name and address:  Agency DFA code:

Contact person's name:  Phone number:  E-mail address:

Type of rule action: New  Amendment  Repeal  Emergency  Renumber  (ALD Use) Recent filing date:

Title number:  Title name:

Chapter number:  Chapter name:

Part number:  Part name:

Amendment description (If filing an amendment):   
Amendment's NMAC citation (If filing an amendment):

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### Specific statutory or other authority authorizing rulemaking:

Notice date(s):  Hearing date(s):  Rule adoption date:  Rule effective date:

# Concise Explanatory Statement For Rulemaking Adoption:

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## Findings required for rulemaking adoption:

### Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

See attached

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

Maggie Toulouse Oliver

Check if authority has been delegated

Title:

New Mexico Secretary of State

Signature: (BLACK ink only OR Digital Signature)

*Maggie Toulouse Oliver*

Date signed:

12/16/2021

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OFFICE OF THE NEW MEXICO SECRETARY OF STATE

IN REFERENCE:

RULEMAKING PROCEEDING FOR THE REPEAL OF  
1.10.31 NMAC – FINANCIAL DISCLOSURE REPORTING PROCEDURES

**CONCISE EXPLANATORY STATEMENT**

The Office of the New Mexico Secretary of State (“SOS”) hereby adopts the Financial Disclosure Reporting Procedures rule; that is codified as 1.10.31 NMAC.

(1) Statutory Authority for Rule Promulgation:

This rule is authorized by Section 10-16A-9 NMSA 1978.

(2) Effective Date of Rule:

January 1, 2022

(3) Date of Adoption of Rule:

December 16, 2021

(4) Reasons for Adopting Rule:

The objective of the rule is to establish uniformity in the filing and enforcement of the financial disclosure act as prescribed by the Financial Disclosure Act [Chapter 10, Article 16A NMSA 1978].

(5) Reasons for changes from Published Rule:

The changes made to the published rules are based on written and oral public comment received.

1.10.31.7(A) NMAC was modified such that the definition of “business interest” better aligns with statutory language and provides for a more robust definition by requiring filers to include information when a business interest puts the filer at risk of losing \$10,000 or more.

10.31.7(C) NMAC was modified such that the definition of “employer” removes the requirement for a salary to be paid. Therefore, the definition for “salary” previously defined at Subsection K is no longer needed and removed and the rule was renumbered accordingly.

1.10.31.7(G) NMAC was modified such that the definition of “income” includes per diem if it is deemed taxable by the Internal Revenue Service.

1.10.31.8 subsection titles were minimally modified to improve readability and a lettering sequence error was corrected. Also, a new Subsection Q was added to require that the statement be signed under penalty of perjury.

1.10.31.10 NMAC added a new Subsection D expanding on the responsibilities of the secretary of state to conduct annual compliance reviews.

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(6) Reasons for Not Accepting Substantive Arguments from Public Comment.

The SOS received conflicting public comment regarding how to address the disclosure of filers who are self-employed. The SOS chose not to expand upon the definition of “employer” at 10.31.7(C) NMAC or 1.10.31.8(D) NMAC to include instructions regarding self-employment because the existing definition of employer addresses the concern that disclosure requires that self-filers disclose who hires or pays them for work even if self-employed.

The SOS chose not to substantively modify Section 1.10.31.8(F) NMAC as the current language aligns with the current statutory requirements that require gross income be reported by category rather than by each single line item. Maintaining the current language promotes uniformity in filling out the statements.

The proposed repeal is hereby adopted as of the date of this Concise Explanatory Statement.

**IT IS SO ORDERED.**

ON BEHALF OF THE OFFICE OF THE  
NEW MEXICO SECRETARY OF STATE

*Maggie Toulouse Oliver*

12/16/2021

DATE

\_\_\_\_\_  
Maggie Toulouse Oliver  
Secretary of State



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**TITLE 1 GENERAL GOVERNMENT ADMINISTRATION**  
**CHAPTER 10 ELECTIONS AND ELECTED OFFICIALS**  
**PART 31 FINANCIAL DISCLOSURE REPORTING PROCEDURES**

**1.10.31.1 ISSUING AGENCY:** Office of the Secretary of State  
[1.10.31.1 NMAC - N, 1/1/2022]

**1.10.31.2 SCOPE:** The rule applies to all persons required to file financial disclosure statements in accordance with the Financial Disclosure Act, Chapter 10, Article 16A NMSA 1978.  
[1.10.31.2 NMAC - N, 1/1/2022]

**1.10.31.3 STATUTORY AUTHORITY:** This rule is authorized by Section 10-16A-9 NMSA 1978.  
[1.10.31.3 NMAC - N, 1/1/2022]

**1.10.31.4 DURATION:** Permanent  
[1.10.31.4 NMAC - N, 1/1/2022]

**1.10.31.5 EFFECTIVE DATE:** January 1, 2022, unless a later date is cited at the end of a section.  
[1.10.31.5 NMAC - N, 1/1/2022]

**1.10.31.6 OBJECTIVE:** The objective of the rule is to establish uniform procedures for the filing of financial disclosure statements and clarify undefined terms.  
[1.10.31.6 NMAC - N, 1/1/2022]

**1.10.31.7 DEFINITIONS:**

**A. "Business interest"** means any direct or indirect financial interest or financial obligation of \$10,000 or more such as an owner, member, partner, lessor, investor, or shareholder in a business or where the filer is at risk of losing \$10,000 or more.

**B. "Consulting"** means giving expert advice in professional, technical, financial, legal, and business matters.

**C. "Employer"** means a person or organization that hires and pays another person in exchange for work.

**D. "External complaint"** means a complaint filed by a person and not instituted by either the secretary of state or the state ethics commission.

**E. "Filer"** means the person obligated to file a financial disclosure statement.

**F. "Financial disclosure statement (FDS)"** means the pdf form prescribed by the secretary of state that is generated upon a filer filing a report in the electronic system provided by the secretary of state.

**G. "Income"** means money that a person receives in exchange for working, producing a product or service, or investing capital. For purposes of financial disclosure statements, per diem is considered income when it is deemed taxable by the Internal Revenue Service.

**H. "Income source"** means the broad categories as described pursuant Paragraph (2) of Subsection D of Section 10-16A-3 NMSA 1978.

**I. "Internal compliance violation"** means a violation of the Financial Disclosure Act identified by the secretary of state or the state ethics commission based on incomplete, misleading, false, or incorrect financial disclosure statement.

**J. "Major areas of specialization"** means the areas of law or consulting for which a person concentrates to earn an income.

**K. "State agency head"** means the principal officer of any executive or legislative agency receiving an annual appropriation in either Section 4 of the General Appropriations Act or an annual appropriations bill appropriating funds to legislative agencies.

**L. "Title"** means the name given to a position of employment by an employer.

**M. "Professional license"** means an official process, administered by a state-level authority, that is required by law for an individual to practice or work in a regulated profession.

**N. "Voluntary compliance"** means a filer's correction of all violations alleged in a complaint or a notification from the secretary of state or the state ethics commission of an internal compliance violation.

[1.10.31.7 NMAC - N, 1/1/2022]

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**1.10.31.8 REQUIRED DISCLOSURES**

**A.** The proper filing officer for filing a FDS is the secretary of state. The secretary of state has prescribed the use of an electronic filing system which shall be used by all persons required to file a FDS. Paper form submissions will not be accepted.

**B.** Contact information (Section 1). The filer shall disclose the filer's full name, residential address, and mailing address on the FDS. If a filer is currently married, the filer shall disclose the full name of the filer's spouse on the FDS.

**C.** Current filing status (Section 2). The FDS shall disclose:

(1) if the filer is a candidate or public official, the name of the office held or sought and the start date of the first term of office held or sought;

(2) if the filer is a state agency head, the name of the agency and the first day the filer held the position of state agency head;

(3) if the filer is a member of a board or commission, the name of the board or commission and the first day the filer held the position as a board or commission member;

(4) if the filer is a member of the insurance nominating committee or member of the state ethics commission, the name of the commission and the first day the filer held the position on the commission; or

(5) if the filer is an employee of the state and is required to file pursuant to Subsection A of Section 10-16A-4 NMSA 1978, the name of the state agency and the first day the filer held a position at the state agency.

**D.** Employer information (Section 3). The filer shall disclose the employer's name, phone number, address, title, and nature of business or occupation for every employer of the filer on the FDS. The filer shall include the filer's current employer(s) and any previous employer(s) from the prior calendar year.

**E.** Spouse's employer information (Section 4). If the filer is married, the filer shall disclose the employer's name, phone number, address, title, and nature of business or occupation for every employer of the filer's spouse on the FDS. The filer shall include the current employer(s) and any previous employer(s) from the prior calendar year.

**F.** Sources of gross income over \$5,000 (Section 5). The filer shall disclose all sources of gross income over \$5,000 during the prior calendar year for the filer and the filer's spouse listed by income source and whether the income was earned by the filer or the filer's spouse on the FDS. For example, if the filer makes over \$5,000 on two different real estate holdings, the filer must list the income source category of "real estate" once. If both the filer and the filer's spouse each earn an income source from the same category, the filer shall list one line item for each, the filer and the filer's spouse. In the case that a single income source is earned jointly, the filer shall list the income source once and list the filer as the income holder.

**G.** Law practice, consulting operation, or similar business (Section 6). If a filer or filer's spouse is employed as an attorney or a consultant, the filer shall describe each major area of specialization for the filer and filer's spouse. Using the general term of "law" or "consulting" is not descriptive enough for this section of the FDS. The filer shall use the income sources listed pursuant to Paragraph (2) of Subsection D of Section 10-16A-3 NMSA 1978 or a description that is equally or more descriptive.

**H.** Lobbying clients (Section 7). If a filer, filer's spouse, or other person associated with a business interest of the filer or filer's spouse is a registered lobbyist in the current or prior calendar year, the filer shall disclose the following on the FDS:

(1) the name of the lobbyist; and

(2) the name and address of the client represented by the lobbyist.

**I.** Real estate owned in New Mexico (Section 8). The filer shall disclose a general description of the type of property and the county in which it is located for all real estate owned by the filer and the filer's spouse in New Mexico other than the filer's personal residence. If a property is owned jointly with other persons, the filer shall list the owner as the filer on the FDS. The use of "house," "farmland," or "vacant lot" are acceptable examples of a general description pursuant to this section.

**J.** Other New Mexico business interests over \$10,000 (Section 9). The filer shall disclose all business interests not already listed in another section of the FDS for the filer and the filer's spouse. The information required for a business interest is the name of the business, the position held by the filer or filer's spouse, a description of the business purpose, and whether the business interest is that of the filer or the filer's spouse. If both the filer and the filer's spouse hold a business interest in the same business, the filer shall make an entry for each person on the FDS for that business.



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- K.** For-profit board membership (Section 10). The filer shall disclose the name of all for-profit business(es) for which the filer or the filer's spouse are a board member regardless of any financial interest.
- L.** New Mexico professional licenses (Section 11). The filer shall disclose the type of license(s) held at the time the FDS is filed by the filer or the filer's spouse.
- M.** Goods or services to state agency over \$5,000 (Section 12). The filer shall disclose the name of every state agency that the filer or filer's spouse provided over \$5,000 in goods or services in the prior calendar year.
- N.** State agency representation (Section 13). The filer shall disclose the name of every state agency, other than a court, in which a person listed on the FDS either represented or assisted clients in the course of the filer's employment in the prior calendar year.
- O.** General information/memo field (Section 14). The filer may provide further details regarding any financial or business interests not otherwise disclosed on the FDS.
- P.** This rule shall not be construed to prohibit a filer from disclosing more information than is required on their FDS.
- Q.** The FDS shall be electronically signed by the filer under penalty of perjury that the information provided is true, accurate and complete to the best of the filer's knowledge.  
[1.10.31.8 NMAC - N, 1/1/2022]

**1.10.31.9 TIME OF FILING**

- A.** A filer shall file an amended FDS at any time to reflect a significant change in the filer's or filer's spouse's business and financial interests in the current calendar year.
- B.** A person holding a legislative or statewide office shall file a FDS in January of every year by January 31 at midnight.
- C.** A candidate for legislative or statewide office, that has not already filed a FDS in the same year, shall file a FDS with the secretary of state within three days of filing a declaration of candidacy. Pursuant to Subsection H of Section 10-16A-2 NMSA 1978, a candidate for legislative or statewide offices who does not file a FDS before the date for qualification of the person as a candidate shall be disqualified by the proper filing officer as a candidate.
- D.** A state agency head or board or commission member required to file a FDS, shall file within 30 days of being hired or appointed and by January 31 at midnight each year thereafter as long as the filer holds the same position.
- E.** A person who is required to file a FDS for more than one reason, for example the filer is appointed to multiple boards, shall only file one FDS upon the filer's first appointment and in January each year thereafter for as long as the filer maintains at least one position that requires a FDS. The filer shall list all positions held or offices sought on the filer's FDS.  
[1.10.31.9 NMAC -N, 1/1/2022]

**1.10.31.10 RESPONSIBILITIES OF THE SECRETARY OF STATE**

- A.** The secretary of state shall maintain training materials regarding compliance with the Financial Disclosure Act and the use of the electronic filing system used to file a FDS on the secretary of state's website.
- B.** If the secretary of state receives an external complaint about a person required to file under the Financial Disclosure Act or otherwise becomes aware of a potential violation or discrepancy, the secretary of state shall provide the filer ten business days to come into voluntary compliance with the Financial Disclosure Act before referring the matter to the state ethics commission.
- C.** The secretary of state shall notify the filer of an internal compliance violation and provide the person ten business days to correct the matter. If the filer responsible for the internal compliance violation does not correct the matter within ten business days of receiving a notice from the secretary of state, the secretary of state shall notify the state ethics commission and transmit to the state ethics commission any documents related to the internal compliance violation.
- D.** The secretary of state shall conduct annual reviews for compliance with the Financial Disclosure Act.  
[1.10.31.10 NMAC -N, 1/1/2022]