



TO: Ms. Kari Fresquez, Director of Legislative and Executive Affairs
Office of the New Mexico Secretary of State

FROM: New Mexico Ethics Watch (NMEW)

RE: Proposed Rule 1.10.31 (Title 1, Chapter 10, Part 31 NMAC),
Financial Disclosure Reporting Procedures

DATE: December 13, 2021

Dear Ms. Fresquez,

We write in response to a request for comments pertaining to the proposed Rule 1.10.31 (Title 1, Chapter 10, Part 31 NMAC), Disclosure Reporting Procedures. We appreciate the opportunity to comment on the proposed rule. Please do not hesitate to contact us for clarification or with any questions.

General Considerations

NMEW has previously provided the Office of the Secretary of State with a mock financial disclosure form containing questions and instructions that NMEW believes would be allowable and acceptable under the current Financial Disclosure Act, Section 10-16A-1 NMSA 1978. We attach that form for easy reference.

In general, NMEW urges the Office of the Secretary of State to err on the side of requiring *more* transparency, rather than less, within the substantive boundaries of the existing Financial Disclosure Act.

Specific Concerns

1.10.31.7 DEFINITIONS

A. "Business interest" means any direct or indirect financial interest or financial obligation over \$10,000 such as an owner, member, partner, lessor, investor, or shareholder in a business.

Section 10-16A -3(D)(4) NMSA 1978 requires the reporting of, "all other New Mexico business interests not otherwise listed *of ten thousand dollars (\$10,000) or more* in a New Mexico business or entity, including any position held and a general statement of purpose of the business or entity". (Emphasis added.) NMEW respectfully suggests that the proposed definition be amended to define business interest to mean "any direct or indirect financial interest or financial



obligation of \$10,000 or more...” (emphasis added), in order to be consistent with the underlying statute.

NMEW respectfully suggests adding to the end of the proposed Subsection A, “...or where the filer is at risk of losing \$10,000 or more,” in order to take in situations not described within the proposed definition either because such situations are not yet contemplated or not yet in existence.

1.10.31.7 DEFINITIONS

C. “Employer” means a person or organization that hires and pays another person a salary in exchange for work.

Respectfully, NMEW believes that the definition of “employer” that requires the paying of a salary in exchange is too restrictive to take in all of the employment that occurs and for which transparency is required, in today’s working environment. While Subsection K defines “Salary” to mean “compensation for services paid at regular intervals on a yearly basis,” this definition still would not encompass or reveal working relationships based upon contracted terms, for which an individual might receive compensation at irregular intervals, and which many public servants participate in as contractors and consultants.

NMEW respectfully suggests that the term “employer” be defined to mean “a person or organization that hires or pays another person in exchange for work,” as defined in the draft “Disclosure Act” presented in State Ethics Commission public materials for their 12/3/21 meeting, Appendix 1, at <https://www.sec.state.nm.us/wp-content/uploads/2021/11/Public-Materials-for-2021-12-3-Commission-Meeting-Updated-11-24.pdf>.

The use of this more comprehensive definition would make irrelevant the need to define the term “salary,” and, thus, Subsection K could be removed from consideration.

NMEW respectfully suggests adding to the definition of “employer,” or within the instructions accompanying the Financial Disclosure Statement online form, language that makes it clear that a filer who is self-employed needs to report the self-employment, either under their business name, if they have one, or under their own name, in order to provide transparency to working situations that otherwise would not be disclosed due to a limited definition of “employer.” (Note that on NMEW’s attached mock form, Section 2, “Employer Information,” the form instruction requires a filer to provide, “all requested information for each employer including self-employment.”)

1.10.31.7 DEFINITIONS

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, legislative per diem is not income.

NMEW respectfully suggests not opting legislative per diem out from the reporting requirements. While every legislator can be assumed to receive legislative per diem, not every legislator can be assumed to reach the \$5,000 gross income threshold for reporting as required under the Financial Disclosure Act. It may be safe to say that legislative per diem is considered income by the Internal Revenue Service. If so, NMEW can see no reason why legislative per diem would not be considered as income to be reported on a financial disclosure statement. Section 10-16A-3(D)(2) NMSA 1978 provides the category of “government” for purposes of reporting.

1.10.31.8 REQUIRED DISCLOSURES

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.

NMEW respectfully suggests that the portion of Subsection D set out above be amended to read, “The filer shall disclose the employer’s name, phone number, address, title, and nature of business or occupation for every employer, *including self-employment*, of the filer on the FDS.” (Emphasis added.) NMEW suggests this change for reasons set out in its comments on proposed Rule 1.10.31.7, DEFINITIONS, above.

Additionally, NMEW respectfully suggests requiring a filer to disclose and affirmatively state when a filer or filer’s spouse is “unemployed” or “retired”.

1.10.31.8 REQUIRED DISCLOSURES

F. 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 only list the income source 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.

