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Concise Explanatory Statement For Rulemaking Adoption:

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 attachment: CONCISE EXPLANATORY STATEMENT FOR NMAC 1.8.4

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

Name:

New Mexico State Ethics Commission

Check if authority has been delegated

☐

Title:

Executive Director

Signature: (BLACK ink only)

Date signed:

Jeremy Farris

Digitally signed by Jeremy Farris
Date: 2020.12.09 08:17:33 -07'00'

12/7/2020

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Frances F. Williams

STATE ETHICS COMMISSION

CONCISE EXPLANATORY STATEMENT FOR 1.8.4 NMAC (NMSA 1978, § 14-4-5.5 & 1.24.25.14.F NMAC)

Submitted to New Mexico State Records Center and Archives: December __, 2020

I. **Citation to authority authorizing rule:**

Sections 11 and 11.1 of the Governmental Conduct Act, Section 10-16-1 NMSA 1978; and Paragraph 4 of Subsection B of Section 5 of the State Ethics Commission Act, Section 10-16G-1 NMSA 1978.

II. **Effective date of rule:** Date of final publication in *New Mexico Register*, likely Vol. XXXI, Issue 24 (December 29, 2020).

III. **Date of adoption of rule:** December 4, 2020

IV. **Date of meeting at which agency voted to approve rule:** December 4, 2020

V. **Reasons for adopting rule:**

Section 10-16G-5(B)(4) of the State Ethics Commission Act requires the Commission to issue a proposed code of ethics for state agencies. Elected statewide executive branch officers and other state agencies must consider this proposed code when adopting either a code of conduct under Section 10-16-11(C) of the Governmental Conduct Act or a code of ethics under Section 10-16G-5(B)(4) of the State Ethics Commission Act for employees subject to the adopting agencies' control.

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VI. **Reasons for any change between the initial published amendments to rule and final adopted amendments to rule:**

1.8.4.1 ISSUING AGENCY

No changes.

1.8.4.2 SCOPE

No changes.

1.8.4.3 STATUTORY AUTHORITY

No changes.

1.8.4.4 DURATION

No changes.

1.8.4.5 EFFECTIVE DATE

No changes.

1.8.4.6 OBJECTIVE

1.8.4.6: Changes “violations” to “violation”.

Rationale: Grammar.

1.8.4.6: Adds “, including dismissal, demotion or suspension, in accordance with state law”

Rationale: Additional language specifies the potential administrative consequences of a violation of a code provision if and when adopted by adopting agency.

1.8.4.7 DEFINITIONS

1.8.4.7(B): Replaces definition of “business” to mean any “person, company or other organization that buys, sells or provides goods or services, including non-governmental or not-for-profit organizations.”

Rationale: Original definition was not clear and did not specify whether not-for-profit organizations were included. New definition clarifies that not-for-profit organizations are included in the definition of “business” and implies that governmental entities are not included. The new language clarifies that conflicts of interest might exist for public officers and employees through their affiliations with not-for-profit organizations.

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1.8.4.7(E): Adds new provision: “‘**Confidential information**’ has the same meaning as defined by Subsection B of Subsection 2 of the Governmental Conduct Act, Section 10-16-1 NMSA 1978, namely, information that by law or practice is not available to the public.” Renumbers accordingly.

Rationale: Provides a definition to facilitate the inclusion of 1.8.4.13(A)-(B) *infra*, which creates duties on officers and employees not to disclose sensitive personal information, acquired by virtue of their position, unless otherwise required by law, necessary to carry out agency functions, or authorized by the person whose information would be disclosed. State officers and employees, by virtue of their positions in public office, might have access to the private and sensitive personal information of persons living and working within New Mexico. The State Ethics Commission recognizes that it is an ethical duty incumbent upon state officers and employees to keep the private and sensitive information of others private, unless disclosure is required by law, necessary to agency function, or otherwise authorized.

1.8.4.7(F): Adds new provision “Family member” and defines that term by reference to first-degree, second-degree, and third-degree relative, as defined in the nepotism rule at 1.8.4.14(B) NMAC, *infra*. Renumbers accordingly.

Rationale: New Mexico Ethics Coalition recommended a definition of family or close personal relationships, because, without definition, the use of these terms “may become confusing given [New Mexicans’] highly relational and family-centric cultural norms.” The definition makes the meaning of “family member” precise.

1.8.4.7(I): Adds new provision “Immediate family member” and defines that term by reference to first-degree and second-degree relatives, as defined in the nepotism rule at 1.8.4.14(B) NMAC, *infra*. Renumbers accordingly.

Rationale: New Mexico Ethics Coalition recommended a definition of family or close personal relationships, because, without definition, the use of these terms “may become confusing given [New Mexicans’] highly relational and family-centric cultural norms.” The definition makes the meaning of “family member” precise.

1.8.4.7(J): Regarding the definition of “Indirectly”, deletes: “in a roundabout manner; coming about or resulting otherwise than directly or immediately, as effects or consequences”; and adds: “to perform an act, achieve a result or obtain a benefit through another person, by use of implication, suggestion or passive acceptance”

Rationale: Commissioner Villanueva requested a clearer definition of “Indirectly”. The definition serves to clarify indirect action when used in 1.8.4 NMAC.

1.8.4.7(O): Adds new provision: “‘**Sensitive personal information**’ means information about an individual who has provided the information for use by this agency and who may suffer harm or

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adverse consequences from disclosure of the information to persons outside the agency.”
Renumbers accordingly.

Rationale: Provides a definition to facilitate the inclusion of 1.8.4.13(A)-(B) *infra*, which creates duties on officers and employees not to disclose sensitive personal information, acquired by virtue of their position, unless otherwise required by law, necessary to carry out agency functions, or authorized by the person whose information would be disclosed. State officers and employees, by virtue of their positions in public office, might have access to the private and sensitive personal information of persons living and working within New Mexico. The State Ethics Commission recognizes that it is an ethical duty incumbent upon state officers and employees to keep the private and sensitive information of others private, unless disclosure is required by law, necessary to agency function, or otherwise authorized.

1.8.4.10(Q): Adds a new provision: “**Substantial financial interest**” means an ownership interest that is greater than twenty percent.”

Rationale: Adds a definition of *substantial* financial interest to distinguish it from the definition of financial interest. This definition follows the analogous definition of “substantial interest” in Section 10-16-2(L) in the Governmental Conduct Act.

1.8.4.8 **STRUCTURE OF THIS CODE AND CORRESPONDING COMMENTARY**

No changes.

1.8.4.9 **PRINCIPLES OF PUBLIC ETHICS**

1.8.4.9(C): Inserts “be impartial and fair and shall” between “shall” and “never.”

Rationale: Creates a positive exhortation to be impartial and fair before delineating specific prohibitions.

1.8.4.9(H): Deletes: “**Fallibility and reversibility.** Individuals not only err in judgment but also act in ways that unconsciously benefit some and burden others; accordingly, an officer or employee shall endeavor to take official acts and make decisions in ways that are deliberative, open to review and, where appropriate, reversible.” Replaces deleted material with: “**Fallibility and openness to change.** Individuals not only err in judgment but also act in ways that unconsciously benefit some and burden others; accordingly, officers and employees should be open to and invite review, correction and reversal of their actions when they are mistaken, have failed to take relevant information into account, or are otherwise in violation of the principles of this code or the law.”

Rationale: Clarity in meaning. The change is intended to convey a similar principle in more familiar language.

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1.8.4.10 HONEST SERVICES; AVOIDING CONFLICTS OF INTEREST

1.8.4.10(B)(1)(b)(i): Added “, including self-employment information” to the disclosure requirement for “current employer and the nature of the business or occupation.”

Rationale: Addition clarifies that self-employment information is included in the scope of disclosure requirements about the current employment of an officer or agency head and their spouse. New Mexico Ethics Coalition recommends the addition.

1.8.4.10(B)(1)(b)(ii): Added general category descriptions for sources of income over \$5,000 to parallel the disclosure requirements under Section 10-16A-3(D)(2) of the Financial Disclosure Act.

Rationale: This addition makes the rule provision on disclosure of income sources parallel the disclosure under Section 10-16A-3(D)(2) of the Financial Disclosure Act. New Mexico Ethics Coalition recommends the addition.

1.8.4.10(B)(1)(b)(iv): Added “in a New Mexico business or entity, including any position held and a general statement of purpose of the business or entity”.

Rationale: This addition makes the rule provision on disclosure of income sources parallel the disclosure required by Section 10-16A-3(D)(4) of the Financial Disclosure Act. The addition resolves a discrepancy that the New Mexico Ethics Coalition and New Mexico Ethics Watch noted in written comment.

1.8.4.10(B)(1)(b)(v): Replaces “for-profit boards” with “boards of for-profit businesses in New Mexico”.

Rationale: This addition adds clarity in the rule and makes the rule parallels the disclosure required by Section 10-16A-3(D)(5) of the Financial Disclosure Act.

1.8.4.10(B)(2): Deletes former 1.8.4.10(B)(2)(b); renumbers accordingly.

Rationale: In its comments on 1.8.4.10(B)(2)(b), New Mexico Ethics Coalition asserts that “the phrase ‘proportionately equal to or less than the benefit to the general public’ is concerning especially on multi-million dollar deals as this allows for economic gain beyond what has been earned.” Former section 1.8.4.10(B)(2)(b) mirrors Section 10-16-4(B) of the Governmental Conduct Act. After review, the Commission concludes the better approach to disqualification is simply the disqualification rule stated in former 1.8.4.10(B)(2)(a), without any exception for those officers and employees who stand to benefit in a way that is “proportionately equal to or less than the benefit to the general public.” Not only is the “proportionately” language of former section 1.8.4.10(B)(2)(b) and NMSA 1978, section 10-16-4(B) unclear, but also the Commission notes a tension between former section 1.8.4.10(B)(2)(b) and NMSA 1978, Section 10-16-3(A), which requires public officers and employees to use the powers and resources of public office *only* to advance the public interest.

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1.8.4.10(B)(3): Added disclosure requirement for non-profit board memberships.

Rationale: Require disclosure of membership on non-profit corporations by officers or employees.

1.8.4.10(D)(1): Replace existing paragraph 1 with new paragraph 1.

Rationale: The Commission reconsidered the “no cup of coffee” rule, which would have prohibited gifts of any amount from a restricted donor or which are given because of the donee’s official status. The Commission concluded that employees and officers should be able to accept gifts of up to \$250 in value over a calendar year from restricted donor, so long as such gifts are not the result of improper solicitation by an officer or employee and are properly disclosed. Further, the Commission concluded that officers and employees should not solicit any gifts from a restricted donor.

1.8.4.10(D)(2)(a): Replaces “rank” with “grade”

Rationale: The term “grade” is used by the state personnel system to define which employees are under the supervision of others.

1.8.4.10(D)(4): Deletes comma between “gift” and “if”.

Rationale: Grammar.

1.8.4.10(D)(4)(c): After “gift”, inserts “is”; and after “interests”, strikes “may substantially affect” and inserts “that may be substantially affected by”.

Rationale: Grammar.

1.8.4.10(D)(4)(d): Inserts “to the donee” after “access”.

Rationale: Provide additional detail to the concept of “disproportionate access.”

1.8.4.10(D)(5): Replaces “of” with “or” in paragraph title; deletes “unintentionally;” inserts “of any value” between “gift” and “from”.

Rationale: Clarifies that disclosure of gifts and offers of gifts must be disclosed; amends paragraph to comply with the Commission’s deletion of the “no cup of coffee” prohibition in paragraph 1.

1.8.4.10(G)(3)(d): Adds a new paragraph that addresses contracts between an agency and a business in which an agency’s officer or employee has a substantial financial interest, specifically: “This agency may not contract with a business in which any officer or employee of the agency, or a family member, has a substantial financial interest; however, the agency may enter such a contract if the officer or employee publicly discloses the substantial financial interest and the contract is awarded through a competitive process.”

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Rationale: The added language clarifies that the law also prohibits an agency from contracting with a business in which *any* officer or employee of the agency holds a financial interest, apart from employees involved in contracting. This prohibition, unlike the prohibition against contracting with officers or employees involved in procurement, may be waived under the Governmental Conduct Act. The original version of the model rule only stated that in the commission commentary, but the Commission believes that both the prohibition and the possibility of waiver should be explicit in the rule.

1.8.4.10(G)(3)(e): Adds a new paragraph defining acceptable “public disclosure”, specifically: “The requirement to make public disclosure pursuant to subparagraph (c) of paragraph (3) of this subsection shall be satisfied by correspondence to the state purchasing agent and by posting the required disclosure in a prominent place on the webpage of the state agency.”

Rationale: The new language is adapted from an unsuccessful 2019 legislative proposal to combine the ethics provision of the Governmental Conduct Act and the Procurement Code into a single statute. Public disclosure is required by the Governmental Conduct Act to obtain an exception from conflict of interest rules that prevent agency personnel from applying for contracts. The Act, however, does not define acceptable public disclosure. This rule offers such a definition, thereby providing guidance for how to comply with statutory disclosure requirements.

1.8.4.10(G)(4)(b)(ii): Replaces “disclose” with “discloses”; and after “exceed”, strikes “over”.

Rationale: Grammar

1.8.4.10(H)(1): Strikes “within the preceding year”, and replaces that language with: “within two years of the date of the officer’s or employee’s separation from this agency;” deletes “if the contract or action has a value of \$1,000 or more and is the direct result of the officer or employee’s official act” in subparagraph (a); deletes “the value of the contract or action, or” from subparagraph (b).

Rationale: The new language strengthens and clarifies the proposed code’s revolving door provision. Both Commissioners Villanueva and Williams recommended changes to this rule provision. Additional language proposed by Commissioner Bluestone eliminates the \$1,000 floor for contact values and the requirement that the contract be the direct result of the officer or employee’s official act.

1.8.4.10(H)(1)(c): Adds a new paragraph clarifying that former employees of an agency may contract directly with their former employers, specifically: “Nothing in this paragraph shall prevent an agency from contracting with a former employee on terms that otherwise comply with state law and the provisions of this code.”

Rationale: To prevent misinterpretation of the preceding two paragraphs of the proposed code. The rules in subsection H prohibit, under certain circumstances, contracts by agencies with businesses with which former agency employees are associated. These

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rules, in the Governmental Conduct Act, may create the misimpression that former employees are prohibited from entering into direct contracts with their former agencies. The statutory limitations are intended to prevent former employees from lending their connections and inside knowledge to outside businesses, at least until after some time has elapsed after their separation. If an agency determines that the services of a former employee are needed, nothing in these rules or ethics laws prevents the agency from contracting directly with the former employee. *See generally* NMSA 1978, § 10-16-8(A).

1.8.4.11 OPEN GOVERNMENT AND FREEDOM OF INFORMATION

No changes.

1.8.4.12 POLITICAL ACTIVITY

1.8.4.12(F): Adds a new paragraph to cover duties imposed by the Hatch Act, 5 U.S.C §§ 1501-1508, regarding the inability for employees whose salary is paid completely by the United States or a federal agency, either through grants or loans, from contesting a partisan elective office.

Rationale: The addition is necessary to provide guidance for employees whose salaries are paid completely by federal loans or grants regarding the application of the Hatch Act. This addition was inspired by Commissioner Williams's reference to the potential application of the Hatch Act for some state employees whose positions are completely funded by federal dollars.

1.8.4.12(G)(3): Adds "being a candidate in an election for or".

Rationale: The additional language provides a more complete statement of how an officer or employee may participate in political activities while off duty.

1.8.4.13 NON-DISCLOSURE OF CONFIDENTIAL OR SENSITIVE PERSONAL INFORMATION

1.8.4.13(A)-(B): Adds two paragraphs to create duties on officers and employees not to disclose confidential information for private gain; and not to disclose sensitive personal information, acquired by virtue of their position, unless otherwise required by law, necessary to carry out agency functions, or authorized by the person whose information would be disclosed.

Rationale: State officers and employees, by virtue of their positions in public office, sometimes have access to confidential information and sensitive personal information of persons living and working within New Mexico. The State Ethics Commission recognizes that it is an ethical duty incumbent upon state officers and employees to keep the private and sensitive information of others private, unless disclosure is required by law, necessary to agency function, or otherwise authorized.

1.8.4.14 NEPOTISM

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1.8.4.14(A): Adds a nepotism rule that prohibits hiring, promotion and direct supervision of an employee by an individual who is related by blood, adoption or marriage within the first, second or third degree to the employee.

Rationale: This rule works to prevent the emergence of moral conflicts that public officers and employees might experience if they were forced to make choices between the public good and the special regard and partiality that persons rightly have for members of their family. The rule, therefore, protects the public good from being disregarded in lieu of partiality between family members who occupy positions of public power. For these reasons, the State Ethics Commission believes that a nepotism rule belongs in any code of ethics for public employees.

1.8.4.14(B): Provides extensional definitions of familial relationships in the first, second or third degree.

Rationale: Defines familial relationships in the first, second or third degree in the same way as those terms are defined by the federal regulations corresponding to the Genetic Information Nondiscrimination Act of 2008, at 29 CFR § 1635.3(a)(2).

1.8.4.15 SEXUAL HARASSMENT

1.8.4.15(A)-(C): Deletes entirety of former 1.8.4.15 “Ethical Conduct in the Workplace” and separates and amplifies provisions of that rule in separate rule sections. Adds a rule provision that imposes duties on officers and employees to refrain from sexual harassment of any other employee or persons having business with the agency; provides examples of sexual harassment; and requires officers and employees to learn about what behavior constitutes sexual harassment and to make efforts to remove it from the workplace.

Rationale: The State Ethics Commission believes that a substantive sexual harassment rule belongs in any state agency code of conduct. The rule does not specify the details of sexual harassment trainings, or who should provide those trainings; those decisions are best left to the individual agencies.

1.8.4.16 SUBSTANCE ABUSE

1.8.4.16(A)-(C): Adds rule provisions that point state agencies to the extant NMAC provisions regarding substance abuse and, in particular, the role of an agency’s designated substance abuse coordinator, required by 1.7.8 NMAC.

Rationale: According to the Centers for Disease Control and Prevention, New Mexico has the highest per capita number of alcohol-related deaths of any state in the union. Consistent with efforts to ameliorate this public problem, Commissioner Williams recommended the addition of a provision of the proposed code that deals with the problem of substance abuse in the workplace. The proposed code adverts to already existing rules in 1.7.8 NMAC that pertain to detection and treatment of substance abuse in state agencies.

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1.8.4.17 ENFORCEMENT AND INTERPRETATION

1.8.4.17(A)-(E): Adds rule provisions that: (i) specify the categories of discipline that are available for code violations; (ii) require acknowledgement by agency officers and employees and internal complaint procedures; (iii) clarify that officers and employees of agencies adopting proposed code provisions can request advisory opinions from the State Ethics Commission; and (iv) make clear that the disciplinary remedies that corresponded to violations of the proposed code do not preclude other remedies available at law.

Rationale: A provision that specifies the procedures for enforcement and interpretation of substantive code provisions is necessary to the functioning of any code of conduct.

VII. **Reasons for not accepting substantive arguments made through written pre-filed public comment:**

1.8.4.1 ISSUING AGENCY

No comments received.

1.8.4.2 SCOPE

1.8.4.2: New Mexico Ethics Coalition objects to the use of the word “consider” and asserts (incorrectly) that “[t]he code is clearly meant as a requirement, and should be consistently stated as such.”

Rationale: The State Ethics Commission lacks the rulemaking authority to promulgate a code of conduct that directly binds the officers and employees of other state agencies. At most, the Commission has the rulemaking power to issue a proposed code of conduct and require other agencies to consider the Commission’s proposed code when adopting their own specific codes.

1.8.4.3 STATUTORY AUTHORITY

No comments received.

1.8.4.4 DURATION

No comments received.

1.8.4.5 EFFECTIVE DATE

No comments received.

1.8.4.6 OBJECTIVE

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1.8.4.6: New Mexico Ethics Coalition recommends clarification as to whether the proposed code “carr[ies] the weight of a rule which can be violated or is it simply a standard which one may or may not meet.”

Rationale: Sections 1.8.4.2 and 1.8.4.6 make clear that the rules provide a proposed code that agencies may adopt. The proposed code provisions are binding upon officers and employees of state agencies if and only if the agencies adopt the proposed code’s provisions. See 1.8.4.6 (“If adopted, this Code will furnish standards of conduct for the adopting agency’s officers and employees, the violation of which could form the basis for discipline by the adopting agency, including dismissal, demotion or suspension, in accordance with state law.”).

1.8.4.7 DEFINITIONS

1.8.4.7(E): New Mexico Ethics Watch and New Mexico Ethics Coalition argued that the definition of “financial interest” be expanded to include “holding an ownership stake, investing in, and at risk of losing \$10,000 or more”.

Rationale: The Commission believes that the proposed language would work to constrict, rather than expand, the definition of financial interests which should be disclosed. The current definition of financial interest is not set at a \$10,000 minimum amount.

1.8.4.7(F): New Mexico Ethics Coalition notes that the definition of Gift “seems to mix categories,” because the definition “refers to both reimbursement for services and compensation for services.”

Rationale: The definition of “gift” both in the Gift Act and the proposed code provisions provide for several exceptions, including exceptions for (i) compensation for services rendered and (ii) reimbursement for out-of-pocket expenses incurred in providing a service. Neither compensation or reimbursement for incidental expenses is a gift, under legal definitions or common parlance.

1.8.4.8 STRUCTURE OF THIS CODE AND CORRESPONDING COMMENTARY

1.8.4.8(B): New Mexico Ethics Coalition recommends the use of technology that connects readers with the commentary that accompanies the proposed code.

Rationale: The State Ethics Commission appreciates this suggestion and plans to act upon it once these rules are promulgated and published in the New Mexico Administrative Code.

1.8.4.9 PRINCIPLES OF PUBLIC ETHICS

No comments received.

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1.8.4.10 HONEST SERVICES; AVOIDING CONFLICTS OF INTEREST

1.8.4.10: New Mexico Ethics Coalition argues for a rule change that requires “each and every contract for public service should have a provision that states all of the records produced by the contractor are subject to the Inspection of Public Records Act.”

Rationale: The State Purchasing Division and the Contracts Review Bureau of the General Services Department are the state agencies better positioned to consider and promulgate such a rule.

1.8.4.10(A)(2): New Mexico Ethics Watch and New Mexico Ethics Coalition encourage the Commission to create a model outside employment disclosure form.

Rationale: The State Ethics Commission notes and appreciates this recommendation as an addendum to the promulgated 1.8.4 NMAC.

1.8.4.10(B)(1)(b)(iv): New Mexico Ethics Coalition argues that this section should require disclosure of membership on non-profit boards.

Rationale: Membership on non-profit boards ordinarily does not redound to the financial interest of the board members; to the contrary, membership on non-profit boards ordinarily carries an expectation that the board member will make a financial contribution to the non-profit organization.

1.8.4.10(B)(1)(b)(ii): New Mexico Ethics Watch recommends the requirement that sources of incomes be reported under “broad general categories” be jettisoned in favor of requiring disclosure of specific details of sources of income in excess of \$5,000.00.

Rationale: This recommendation suggests a disclosure requirement for state officers and agency heads that exceeds the requirements set forth in the Financial Disclosure Act, NMSA 1978, §§ 10-16A-1 to -8. The State Ethics Commission shares jurisdiction to investigate and enforce the provisions of the Financial Disclosure Act with the Office of the Secretary of State. The State Ethics Commission believes that an attempt to require more stringent financial-disclosure requirements of state officers and state agency heads is best pursued through legislative amendment of the Financial Disclosure Act, in cooperation with the Office of the Secretary of State, as opposed to the Commission’s unilateral rulemaking of a proposed code of ethics.

1.8.4.10(B): New Mexico Ethics Watch argues for changes that expands collateral filing requirements to include domestic partners and other family or household members. New Mexico Ethics Coalition similarly suggests an “expansion to include disclosure information for some level of family members, not just spouse, and also include ‘life partners’ or some other title that fits better.”

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Rationale: This recommendation suggests a disclosure requirement for state officers and agency heads that exceeds the requirements set forth in the Financial Disclosure Act, NMSA 1978, §§ 10-16A-1 to -8. The State Ethics Commission shares jurisdiction to investigate and enforce the provisions of the Financial Disclosure Act with the Office of the Secretary of State. The State Ethics Commission believes that an attempt to require more stringent financial-disclosure requirements of state officers and state agency heads is best pursued through legislative amendment of the Financial Disclosure Act, in cooperation with the Office of the Secretary of State, as opposed to the Commission's unilateral rulemaking of a proposed code of ethics.

1.8.4.10(B): New Mexico Ethics Watch argues for changes that require reporting of income under bands of income so that it is clear how significant holding a particular asset or financial interest is.

Rationale: This recommendation suggests a disclosure requirement for state officers and agency heads that exceeds the requirements set forth in the Financial Disclosure Act, NMSA 1978, §§ 10-16A-1 to -8. The State Ethics Commission shares jurisdiction to investigate and enforce the provisions of the Financial Disclosure Act with the Office of the Secretary of State. The State Ethics Commission believes that an attempt to require more stringent financial-disclosure requirements of state officers and state agency heads is best pursued through legislative amendment of the Financial Disclosure Act, in cooperation with the Office of the Secretary of State, as opposed to the Commission's unilateral rulemaking of a proposed code of ethics.

1.8.4.10(B): New Mexico Ethics Watch argues for changes that tighten requirements surrounding reporting of the filer's residence, requiring a spouse or domestic partner to report their residence address; requiring the filer of the form to indicate whether the residence is owned or rented, and, if rented, from whom, and requiring owned residences to be declared along with other real property holdings.

Rationale: This recommendation suggests a disclosure requirement for state officers and agency heads that exceeds the requirements set forth in the Financial Disclosure Act, NMSA 1978, §§ 10-16A-1 to -8. The State Ethics Commission shares jurisdiction to investigate and enforce the provisions of the Financial Disclosure Act with the Office of the Secretary of State. The State Ethics Commission believes that an attempt to require more stringent financial-disclosure requirements of state officers and state agency heads is best pursued through legislative amendment of the Financial Disclosure Act, in cooperation with the Office of the Secretary of State, as opposed to the Commission's unilateral rulemaking of a proposed code of ethics.

1.8.4.10(B): New Mexico Ethics Watch argues for changes that require elected officials appointed to file a financial disclosure within 30 days of appointment, as state agency heads and other appointed officials.

Rationale: This recommendation suggests a disclosure requirement for state officers and agency heads that exceeds the requirements set forth in the Financial Disclosure Act,

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NMSA 1978, §§ 10-16A-1 to -8. The State Ethics Commission shares jurisdiction to investigate and enforce the provisions of the Financial Disclosure Act with the Office of the Secretary of State. The State Ethics Commission believes that an attempt to require more stringent financial-disclosure requirements of state officers and state agency heads is best pursued through legislative amendment of the Financial Disclosure Act, in cooperation with the Office of the Secretary of State, as opposed to the Commission's unilateral rulemaking of a proposed code of ethics.

1.8.4.10(B): New Mexico Ethics Watch argues for changes that remove present limitations on reporting membership on boards, business interests, professional licenses, and similar associations to New Mexico, arguing that such licenses, board memberships, and business interests should be reported wherever they occur.

Rationale: This recommendation suggests a disclosure requirement for state officers and agency heads that exceeds the requirements set forth in the Financial Disclosure Act, NMSA 1978, §§ 10-16A-1 to -8. The State Ethics Commission shares jurisdiction to investigate and enforce the provisions of the Financial Disclosure Act with the Office of the Secretary of State. The State Ethics Commission believes that an attempt to require more stringent financial-disclosure requirements of state officers and state agency heads is best pursued through legislative amendment of the Financial Disclosure Act, in cooperation with the Office of the Secretary of State, as opposed to the Commission's unilateral rulemaking of a proposed code of ethics.

1.8.4.10(D)(4): New Mexico Ethics Coalition notes that the proposed duty to consider declining an otherwise permissible gift that would make a reasonable person question the officer or employee's integrity or impartiality "is another area in which cultural and relational practices might not be defined in the same way by 'reasonable' people."

Rationale: While the State Ethics Commission agrees that reasonable standards, which pervade the law, are open-textured and subject to reasonable disagreement, the comment does not provide enough detail to recommend or to support replacement language for 1.8.4.10(D)(4) NMAC.

1.8.4.10(F)(3): New Mexico Ethics Coalition argues that this "section should clarify how surplus materials, equipment, supplies, and art is discarded."

Rationale: This topic is addressed by statute outside of the Commission's jurisdiction. *See generally* NMSA 1978, §§ 13-6-1 to -8 (concerning the sale and disposition of state property).

1.8.4.11 OPEN GOVERNMENT AND FREEDOM OF INFORMATION

1.8.4.11: New Mexico Ethics Coalition argues that this section "should comply with IPRA and OMA."

Rationale: An employee code of conduct must have limits; it cannot both replicate the New Mexico Statutes Annotated in every pertinent part and remain useful as a guide for state employees. Neither the Inspection of Public Records Act nor the Open Meetings Act are within the Commission's jurisdiction. For those reasons, the Commission declines to issue more specific rule provisions regarding state officer and employee conduct regarding public disclosure and public meetings.

1.8.4.12 POLITICAL ACTIVITY

No comments received.

1.8.4.13 ETHICAL CONDUCT IN THE WORKPLACE

No comments received.