

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 10 ELECTIONS AND ELECTED OFFICIALS
PART 13 CAMPAIGN FINANCE

1.10.13.1 ISSUING AGENCY: Office of the Secretary of State
[1.10.13.1 NMAC - N, 10/03/2017]

1.10.13.2 SCOPE: This rule applies to all persons, candidates and committees covered by the Campaign Practices Act, NMSA 1978 Sections 1-19-1 through 1-19-37.
[1.10.13.2 NMAC - N, 10/03/2017]

1.10.13.3 STATUTORY AUTHORITY: This rule is authorized by Section 1-2-1 NMSA 1978 and Section 1-19-26.2 of the Campaign Reporting Act, NMSA 1978 Sections 1-19-25 through 1-19-37.
[1.10.13.3 NMAC - N, 10/03/2017]

1.10.13.4 DURATION: Permanent
[1.10.13.4 NMAC - N, 10/03/2017]

1.10.13.5 EFFECTIVE DATE: October 3, 2017, unless a later date is cited at the end of a section.
[1.10.13.5 NMAC - N, 10/03/2017]

1.10.13.6 OBJECTIVE: The objective of this rule is to provide clear guidance regarding the application and implementation of the provisions of the Campaign Practices Act, Sections 1-19-1 through 1-19-37 to affected parties in a manner that meets the requirements set forth in applicable case law while also providing for clear and specific guidance to the secretary of state in administering and enforcing the law. [1.10.13.6 NMAC - N, 10/03/2017]

1.10.13.7 DEFINITIONS:

A. “Advertisement” means a communication referring to a candidate or ballot measure that is published, disseminated, distributed or displayed to the public by print, broadcast, satellite, cable or electronic media, including recorded phone messages, internet videos, paid online advertising, recordings, or by printed materials, including mailers, handbills, signs and billboards, but "advertisement" does not include:

(1) A communication by a membership organization or corporation to its current members, stockholders or executive or administrative personnel;

(2) A communication appearing in a news story or editorial distributed through a print, broadcast, satellite, cable or electronic medium, unless the communication is paid for by, or the medium is controlled or owned by, a candidate, campaign committee or political committee;

(3) A candidate debate or forum, or a communication announcing a candidate debate or forum, paid for on behalf of the debate or forum sponsor; provided that two or more candidates for the same position have been invited to participate, or provided that the single candidate is invited in the event that there is only one candidate for that position;

(4) Nonpartisan voter guides allowed by the federal Internal Revenue Code of 1986 for Section 501(c)(3) organizations; or

(5) Statements made to a court or administrative board in the course of a formal judicial or administrative proceeding.

B. “Agent” means a person with express or implied authorization to engage in campaign related activities on behalf of a candidate or committee.

C. “Aggregate contributions” means the sum total of all contributions given to a candidate, campaign committee, or political committee by the same donor in the same election cycle. Aggregate contributions may not exceed contribution limits.

D. “Ballot measure” means a constitutional amendment, bond, tax or other question submitted to the voters in an election.

E. “Clearly identified” means: (1) the name of the candidate or ballot measure appears; (2) a photograph or drawing of the candidate appears; or (3) the identity of the candidate or ballot proposal is otherwise apparent by unambiguous reference.

F. “Committee” means a political committee or campaign committee covered under the Campaign Reporting Act.

G. “Contribution or coordination political committee” means a type of political committee that makes contributions or coordinated expenditures to candidates or committees.

H. “Coordinated expenditure” means an expenditure that is made by a person other than a candidate or campaign committee at the request or suggestion of, or in cooperation, consultation, or concert with, a candidate, an agent of the candidate, the candidate’s campaign committee or political party for the purpose of:

(1) supporting or opposing the nomination or election of a candidate, or

(2) paying for an advertisement that refers to a clearly identified candidate and is published and disseminated to the relevant electorate in New Mexico within thirty days before the primary election or sixty days before the general election in which the candidate is on the ballot.

I. “Debt” means an outstanding expenditure or loan which is not fully paid at the time it is reported in the Campaign Finance Information System and is therefore reported as unpaid debt.

J. “Donor” means contributor.

K. “Earmarking” means making a contribution in which the original donor intends for the contribution to pass through some other person to a specific candidate or committee.

L. “Election cycle” for purposes of applying the disclosure of reporting requirements of the Act and this rule, the definition of this term is the definition set forth in NMSA 1978 Section 1-1-3.1(A) and means the period beginning on the day after the last general election and ending on the day of the general election. For purposes of applying the contribution limits established by NMSA Section 1-1-34.7, the definition is the term used in NMSA 1978 Section 1-19-34.7(G) and is more fully explained in Section 1.10.13.27 of this rule.

M. “Expressly advocate” means that the communication contains a phrase including, but not limited to, "vote for," "re-elect," "support," "cast your ballot for," "Candidate for elected office," "vote against," "defeat," "reject," or "sign the petition for," or a campaign slogan or words that in context and with limited reference to external events, such as the proximity to the election, can have no reasonable meaning other than to advocate the election, passage, or defeat of one or more clearly identified ballot measures or candidates.

N. “Final report” means the last report electronically filed under the Campaign Reporting Act in accordance with Section 1-19-29(F) indicating that:

(1) there are no outstanding campaign debts;

(2) all money has been expended in accordance with the provisions of Section 1-19-29.1; and

(3) the bank account has been closed.

O. “Foreign nationals” means an individual who is not a citizen or a national of the United States (as defined in 8 U.S.C. §1101(a)(22)) and who is not lawfully admitted for permanent residence, as defined by 8 U.S.C.F. §1101(a)(20).

P. “General election cycle” means the period beginning on the day after the primary election and ending on the day of the general election. See Section 1.10.13.27 for specific information on how this is applied to different reporting entities.

Q. “Independent expenditure” means an expenditure that is:

(1) made by a person other than a candidate or campaign committee;

(2) not a coordinated expenditure as defined in paragraph F of this regulation; and

(3) made to pay for an advertisement that:

(a) expressly advocates for the election or defeat of a clearly identified candidate or the passage or defeat of a clearly identified ballot measure;

(b) is susceptible to no other reasonable interpretation than as an appeal to vote for or against a clearly identified candidate or ballot measure; or

(c) refers to a clearly identified candidate or ballot measure and is published and disseminated to the relevant electorate in New Mexico within thirty days before the primary election or sixty days before the general election at which the candidate or ballot measure is on the ballot.

R. “In-kind contributions” means goods or services or anything of value contributed to a candidate or committee other than money. The provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services is an in-kind contribution. Examples of such goods or services include, but are not limited to: securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists. If goods or services are provided at less than the usual and normal charge, the amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged the candidate or committee.

S. “Loan” means an extension of credit to a candidate or committee by any person, including the candidate themselves, for use as monies spent toward the election of a candidate or other political purpose.

T. “Members” means all persons who are currently satisfying the requirements for membership in a membership organization, affirmatively accept the membership organization's invitation to become a member, and either:

(1) Have some significant financial attachment to the membership organization, such as a significant investment or ownership stake; or

(2) Pay membership dues at least annually, of a specific amount predetermined by the organization; or

(3) Have a significant organizational attachment to the membership organization that includes: affirmation of membership on at least an annual basis and direct participatory rights in the governance of the organization. For example, such rights could include the right to vote directly or indirectly for at least one individual on the membership organization's highest governing board; the right to vote on policy questions where the highest governing body of the membership organization is obligated to abide by the results; the right to approve the organization's annual budget; or the right to participate directly in similar aspects of the organization's governance.

U. “Membership organization” means an unincorporated association, trade association, cooperative, corporation without capital stock, or a local, national, or international labor organization that:

(1) Is composed of members, some or all of whom are vested with the power and authority to operate or administer the organization, pursuant to the organization's articles, bylaws, constitution or other formal organizational documents;

(2) Expressly states the qualifications and requirements for membership in its articles, bylaws, constitution or other formal organizational documents;

(3) Makes its articles, bylaws, constitution or other formal organizational documents available to its members;

(4) Expressly solicits persons to become members;

(5) Expressly acknowledges the acceptance of membership, such as by sending a membership card or including the member's name on a membership newsletter list; and

(6) Is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual for offices covered under the Campaign Reporting Act.

V. “Mixed purpose political committee” means a type of political committee that makes independent expenditures and coordinated expenditures or contributions and that segregates funds used for coordinated expenditures and contributions subject to contribution limits into a separate bank account from funds used for independent expenditures.

W. “Person” means individual or entity pursuant to Section 1-19-26(K).

X. “Pledge” means a promise from a contributor to send a contribution by a specified time.

Y. “Political party” means an association that has qualified as a political party pursuant to the provisions of NMSA 1978 Section 1-7-2.

Z. “Primary election cycle” means the period beginning the day after the preceding general election and ending on the day of the primary election. See Section 1.10.13.27 for specific information on how this is applied to different reporting entities.

AA. “Primary purpose” means the purpose for which an entity or committee was either:

(1) created, formed or organized for a political purpose, or

(2) that 50% or more of the expenditures made are in the form of contributions to candidate campaign committees or political committees or on advertisements meant to expressly advocate for a candidate or ballot measure., or

BB. “Relevant electorate” means the constituency eligible to vote for the candidate or ballot measure.

CC. “Reporting individual” means every public official, candidate or treasurer of a campaign committee and every treasurer of a political committee pursuant to Section 1-19-26(Q).

DD. “Solicit” means to ask that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value, whether it is to be made or provided directly to the candidate or committee, or through a conduit or intermediary.

EE. “Sponsoring organization” means a person or group that undertakes certain responsibilities in connection with some other person or group, such as but not limited to, being a proponent, endorser, or advisor.

FF. “Special event” means a barbeque, tea, coffee, dinner, reception, dance, concert or similar fundraiser where tickets costing \$15 or less are sold and no more than \$1,000 net contributions are received.

GG. “Statement of no activity” means the same thing as “statement of exception” or “statement” as provided in Section 1-19-26(R).

HH. “Treasurer” means an individual explicitly designated by a candidate, campaign committee or political committee to authorize disbursements, receive contributions, maintain a proper record of the campaign finances, and along with the candidate, is liable for discrepancies in the finances and reports.
[1.10.13.7 NMAC - N, 10/03/2017]

1.10.13.8 CANDIDATE CAMPAIGN COMMITTEE REGISTRATIONS:

A. A candidate for a non-statewide office shall register the candidate’s campaign committee with the secretary of state within ten days of receiving contributions or expending \$1,000 or more for campaign expenditures; whichever occurs earlier.

B. A candidate for statewide office shall register the candidate’s campaign committee with the secretary of state within ten days of receiving contributions or expending \$2,500 or more for campaign expenditures or filing a declaration of candidacy; whichever occurs earlier.

C. All candidates shall complete a candidate campaign registration form and submit the completed form to the secretary of state, or otherwise with the proper filing officer, if completed at the time the declaration of candidacy is submitted. Following acceptance of the candidate campaign registration form, the secretary of state will create a user account for the candidate in the Campaign Finance Information System (CFIS) and will issue the candidate a unique CFIS user identification and password.

D. A candidate is responsible for ensuring that accurate mailing address, email address, and contact information is kept up to date in CFIS. Failure to provide accurate or current contact information does not limit the candidate’s liability regarding fines and civil actions against the candidate or public official related to campaign reporting.

E. Statutory law requires that all campaign finance reports be filed electronically with the secretary of state’s office. In order to file electronically, the candidate must, at all times, maintain a valid email address on file with the office.

F. A candidate may serve as the candidate’s own treasurer. If the candidate does not serve as the candidate’s own treasurer, then the candidate shall appoint a treasurer who shall be jointly responsible as a reporting individual with the candidate for the campaign committee.

G. If the candidate does not serve as the candidate’s own treasurer, in the event of a vacancy in the position of treasurer, the candidate shall appoint a successor treasurer within 10 days of the vacancy by updating the information electronically in CFIS.

H. The secretary of state presumes the candidate has authorized and approved each report entry submitted to CFIS.

I. A candidate may only have one campaign committee at a time and any candidate campaign registration received will result in the secretary of state moving the last reported campaign balance, including debts, to the new campaign committee account in CFIS unless the candidate is seeking public financing and must keep a previous campaign account open and separated.

[1.10.13.8 NMAC - N, 10/03/2017]

1.10.13.9 WITHDRAWING FROM CANDIDACY: If a candidate files a statement of withdrawal, the candidate must file a final report in CFIS no later than the next report deadline or else the candidate must continue to file CFIS reports pursuant the schedule defined by Section 1-19-29.

[1.10.13.9 NMAC - N, 10/03/2017]

1.10.13.10 POLITICAL COMMITTEE REGISTRATIONS:

A. Pursuant to relevant case law, only the following kinds of persons will be obligated to comply with the requirements for political committees that are prescribed by the Act:

(1) a state or county political party;
(2) an association of two or more persons that has as its primary purpose making contributions to candidates, campaign committees or political committees or coordinated expenditures or any combination thereof and has received more than \$500 in contributions or made expenditures of more than \$500 in the preceding twelve months; and

(3) an association of two or more persons that has as its primary purpose making independent expenditures and that has received more than \$5,000 in contributions or made expenditures of more than \$5,000 in the preceding twelve months.

Unless otherwise stated, requirements for political committees set forth in these rules shall apply only to political committees that fall within one of these enumerated categories, and will not be applied to political committees that satisfy the statutory definition but do not fall within any of these categories. However, all persons making independent expenditures, including all political committees, shall be subject to the reporting requirements for independent expenditures set forth in Section 1.10.13.11 of these rules.

B. Registration.

(1) Political committee registration requirements are outlined in Section 1-19-26.1.

(2) All political committees shall complete a political committee registration form and submit the completed form to the secretary of state. The form shall include:

(a) the full name of the political committee, which shall fairly and accurately reflect the identity of the committee, including any sponsoring organization;

(b) its physical address, a mailing address if different from the physical address, and an email address;

(c) a statement of the political purpose for which the political committee was organized; under this section, the committee shall designate the type of expenditures it will be making; the committee will have the option of registering as:

(i) an independent expenditure political committee;

(ii) a contribution or coordination political committee;

(iii) a mixed purpose political committee. Mixed purpose political committees shall segregate funds that are subject to contribution limits into a separate bank account from funds used for independent expenditures; or

(iv) other; if a political committee selects other, then the political committee shall submit a written explanation to the secretary of state as to why the categories of independent expenditure political committee, contribution or coordination political committee, and mixed purpose political committee do not apply.

(d) the name, address and relationship of any connected or associated organization or entity; a connected or associated organization or entity means a related corporation, union or trade organization through which the political committee receives more than 50 percent of its funding;

(e) the names and addresses of the officers of the committee;

(f) an identification of the bank used by the committee for all expenditures or contributions made or received; this shall include the name of the bank, business address of the branch office where the account was opened, and a telephone number for the bank; and

(g) the treasurer's name, mailing address, email address, and contact information.

(3) Following acceptance of the political committee registration form, the secretary of state will create a user account for the political committee in the Campaign Finance Information System (CFIS) and will issue the treasurer a unique CFIS user identification and password.

(4) The provisions of this section do not apply to a political committee that is located in another state and is registered with the federal election commission (FEC). If the political committee reports with the FEC, the committee shall file a copy of either the full report or the cover sheet and the portions of the federal reporting forms that contain the information on expenditures for and contributions made to reporting individuals in New Mexico with the secretary of state within ten days of filing the report with the FEC.

(5) If a political committee is located in another state, and is making contributions and expenditures to New Mexico reporting individuals, but is not registered with the FEC, then the out-of-state political committee must register and report its New Mexico contributions and expenditures in accordance with the provisions of the Campaign Reporting Act and this rule.

(6) If a political committee is located in New Mexico, and is required to register as a political committee under this rule, the political committee must register with the secretary of state even if it is also registered with the FEC.

(7) The political committee's treasurer is responsible for carrying out the duties described in the Campaign Reporting Act and should understand the responsibilities and potential liabilities associated with those duties. Under the Campaign Reporting Act, the treasurer is a reporting individual who can be named in a complaint or official action by the secretary of state. Additionally, a treasurer may be found liable if he or she knowingly and willfully violates the Campaign Reporting Act.

(8) If a change is made to a treasurer of a political committee, the political committee shall appoint a successor treasurer within 10 days of the vacancy by updating the information electronically in CFIS.

(9) A political committee should not continue to receive or make any contributions or expenditures unless a treasurer and current statement of organization is on file with the secretary of state.

(10) A political committee is responsible for ensuring that accurate mailing address, email address, and contact information is kept up to date in CFIS. Failure to provide accurate or current contact information does not limit the political committee's liability regarding fines and civil actions related to campaign reporting.

C. Statutory law requires that all campaign finance reports be filed electronically with the secretary of state's office. In order to file electronically, the political committee must maintain a valid email address on file with the office.

D. **Political Party Registration:** qualified political parties that file rules in accordance with Article 7 of the Election Code with the secretary of state or county clerk are required to complete and file the political committee registration form with the secretary of state and must adhere to the provisions of the Campaign Reporting Act.

E. The contribution limits provided for in Section 1-19-34.7 do not apply to a political committee that makes only independent expenditures or to any contribution to a political committee that is deposited in a segregated bank account that may only be used to make independent expenditures.

[1.10.13.10 NMAC - N, 10/03/2017]

1.10.13.11 REPORTING OF INDEPENDENT EXPENDITURES

A. Persons making independent expenditures for elections covered by the Act who do not fall within any of the categories enumerated in Section 1.10.13.10(A) are not constitutionally compelled to comply with all the registration and reporting requirements imposed on political committees by the Campaign Reporting Act. However, these persons are required to report certain categories of information regarding the nature of their independent expenditures and the sources of the money that was used to pay for them pursuant to relevant case law. Accordingly, all persons making independent expenditures for elections covered by the Act will be required to file reports in compliance with the rules set forth in this section.

B. Any person who makes an independent expenditure not otherwise required to be reported under these regulations in an amount that exceeds one thousand dollars (\$1,000) for one or more non-statewide race(s) or ballot measure(s) or in an amount that exceeds two thousand five hundred dollars (\$2,500) for one or more statewide race(s) or ballot measure(s), or in an amount that, when added to the aggregate amount of the independent expenditures made by the same person during the election cycle, exceeds these thresholds, shall file a report of the independent expenditure that includes the following information:

(1) The name and address of the person who made the independent expenditure;

(2) The name and address of the person to whom the independent expenditure was made and the amount, date and purpose of the independent expenditure. If no reasonable estimate of the monetary value of a particular expenditure is practicable, it is sufficient to report instead a description of the services, property or rights furnished through the expenditure;

(3) The source of the contributions used to make the independent expenditure as provided in Subsections C and D of this regulation.

(4) The candidate(s) or ballot measure(s) referenced in the advertisement(s) that are paid for by the independent expenditure and a description of the message included in the advertisement(s). If the advertisement(s) refer to multiple candidates or ballot measures, some statewide and some non-statewide, the lower reporting threshold for non-statewide elections (\$1,000 or \$3,000 depending on the amount spent) will trigger the reporting requirement.

C. A person who makes independent expenditures totaling three thousand dollars (\$3,000) or less in a non-statewide race or ballot measure or seven thousand five hundred dollars (\$7,500) or less in a statewide race or ballot measure during the election cycle shall report the name and address of each person who has made contributions of more than a total of two hundred dollars (\$200) in the previous twelve months that were earmarked or made in response to a solicitation to fund independent expenditures, and shall report the amount of each such contribution made by that person.

D. A person who makes independent expenditures totaling more than three thousand dollars (\$3,000) for a non-statewide race or ballot measure or more than seven thousand five hundred dollars (\$7,500) for a statewide race or ballot measure during the election cycle shall either:

(1) Establish a segregated bank account consisting only of funds contributed to the account by individuals to be used for making independent expenditures, and report the name and address of, and amount of

each contribution made by, each contributor who contributed more than two hundred dollars (\$200) to that account in the previous twelve months; or

(2) Report the name and address of, and amount of each donation made by, each donor who donated more than a total of five thousand dollars (\$5,000), to the person making the independent expenditures in the previous twelve months; provided, however, that a donation is exempt from reporting pursuant to this paragraph if the donor requested in writing that the donation not be used to fund independent or coordinated expenditures or make contributions to a candidate, campaign committee or political committee.

E. A person reporting an independent expenditure under this section shall complete the online registration process prescribed by the secretary of state in order to access the required disclosure reporting system. All reports of independent expenditures under this section shall be filed using the required system.

F. Time of Filing Reports:

(1) An independent expenditure of more than three thousand dollars (\$3,000) that is made within fourteen days before a primary, general, or statewide special election shall be reported within twenty-four hours after making the expenditure.

(2) Except for independent expenditure that are required to be reported within twenty-four hours pursuant to paragraph F(1) of this section, every independent expenditure shall be reported on the earliest of the reporting dates specified in Section 1-19-29 subsequent to the date the independent expenditure is made.

(3) An independent expenditure of three thousand dollars (\$3,000) or less shall be reported in accordance with the reporting schedule set forth in Section 1-19-29.

(4) An independent expenditure is considered to be made on the first date on which the communication or advertisement is published, broadcast or otherwise publicly disseminated.

(5) If any such person makes or incurs subsequent independent expenditures, the person shall report such expenditures pursuant to this section.

G. No person may make contributions or expenditures with an intent to conceal the names of persons who are the true source of funds used to make independent expenditures.

[1.10.13.11 NMAC - N, 10/03/2017]

1.10.13.12 GENERAL REPORTING RULES:

A. Candidate Campaign Committees

(1) All campaign committees shall file reports according to the schedule set forth in Section 1-19-29. Reports shall be accepted until midnight mountain time on the date of filing without penalty. Beginning after 12:01 a.m. mountain time on the day after the due date of the report, penalties for late filing shall begin to accrue.

(2) Campaign Committees shall file a report containing all contributions, in-kind contributions, campaign debts or loans, and campaign expenditures in accordance with the Campaign Reporting Act.

(3) Coordinated expenditures made on behalf of the candidate or campaign committee shall be reported by the campaign committee as in-kind contributions received from the coordinating political committee and are subject to contribution limits.

(4) Candidates must file all required reports while they are an active candidate and continue to file timely reports until such time as they meet the requirements to file a final report. For example, a primary election candidate that loses the primary election must file all reports included in the primary election cycle and continue to file reports until the candidate files a final report. Losing an election does not cease a candidate's requirement to file under the Campaign Reporting Act.

(5) A candidate's personal funds spent in support of a candidate's own campaign are considered a contribution and shall be disclosed by filing the required reports in CFIS, however, these funds are not subject to contribution limits.

(6) Upon request by the secretary of state, the campaign committee shall provide a copy of bank statements for any reporting period.

(7) Candidates benefiting from independent expenditures have no obligation to report the independent expenditure.

B. Political committees.

(1) All political committees shall file reports according to the schedule set forth in Section 1-19-29. Reports shall be accepted until midnight on the date of filing without penalty. Beginning after 12:01 a.m. mountain time on the day after the due date of the report, penalties for late filing shall begin to accrue.

(2) Political committees shall report all contributions, in-kind contributions, loans, expenditures, loan repayments, and debt forgiven by the lender.

(3) In addition to disclosing the information required by the Campaign Reporting Act for expenditures, a political committee making coordinated expenditures shall also disclose the name of the candidate, campaign committee, or political committee who is being coordinated with.

(4) Upon request by the secretary of state, the political committee shall provide a copy of bank statements for the political committee for any reporting period.

C. Hardship waivers.

(1) All reports required by these rules shall be filed electronically as prescribed by the secretary of state. Reporting individuals required to file reports may apply to the secretary of state for exemption from electronic filing in case of hardship by submitting a hardship waiver request form prescribed by the secretary of state. The secretary of state may approve or deny this request. Approval may be granted at the discretion of the secretary of state only if the reporting individual has no way to access CFIS.

(2) Upon approval of a hardship, the reporting individual shall submit the report on a prescribed paper form. Approval of a hardship by the secretary of state, authorizes the secretary of state to enter the report into the electronic system on behalf of the reporting individual. A copy of the electronic report entered by the secretary of state will be mailed to the reporting individual once it has been entered into CFIS.

(3) Submission of a hardship waiver does not constitute meeting the reporting requirements including the statutory reporting deadlines. Failure to adhere to a report deadline may still result in fines pursuant to Section 1-19-35. Reporting individuals shall make arrangements for hardship approval with the secretary of state in advance of report deadlines to ensure timely filing.

[1.10.13.12 NMAC - N, 10/03/2017]

1.10.13.13 NO ACTIVITY:

A. All candidates are required to register and file reports in CFIS according to the reporting schedule outlined in the Campaign Reporting Act once a declaration of candidacy has been filed, even if the candidate does not raise or spend any funds. Candidates who have collected no contributions and made no expenditures shall file a statement of no activity.

B. Candidates who do not raise funds are not required to open a campaign bank account.

C. Receiving funds pursuant to the Voter Action Act is considered raising funds for the purpose of this rule.

[1.10.13.13 NMAC - N, 10/03/2017]

1.10.13.14 SUPPLEMENTAL REPORTS:

A. Certain candidates must report contributions and pledges to contribute received beginning the Thursday before an election through the election in CFIS using supplemental reports in accordance with Section 1-19-29(B)(5).

B. If a candidate receives a pledge during the time period specified in Section 1-19-29(B)(5) but does not receive the contribution as pledged, the candidate may later amend the campaign committee's supplemental report.

[1.10.13.14 NMAC - N, 10/03/2017]

1.10.13.15 LATE FILING OF REPORTS:

A. If a reporting individual or person required to file a report under Section 1.10.13.11 fails to timely file a report in CFIS or fails to file a report, a written notice will be sent to the reporting individual or person required to file a report by the secretary of state explaining the violation and the fine imposed.

B. The reporting individual or person required to file a report is afforded ten working days from the date of the written notice to file, if needed, and provide a written explanation within CFIS indicating why the violation occurred.

C. If a timely explanation is provided and the report is filed within the timeframe provided by the notice, the secretary of state will make a determination whether good cause exists to fully or partially waive the fine.

D. If the reporting individual or person required to file the report fails to provide a written response or fails to file a report within the timeframe provided by the notice, the secretary of state shall issue a notice of final action requiring the reporting individual or person required to file the report to file the late report, provide a written explanation of why the violation occurred, and pay the fine owed.

E. Fines for late filing will accrue beginning the day after the filing deadline until the report is filed at the statutory rate of \$50 per day up to a maximum fine of \$5,000 per report. Candidates required to file supplemental reports are subject to additional fines pursuant to Section 1-19-35(C).

F. The reporting individual or person required to file the report may challenge the imposition of a fine within ten working days of the date of the notice final action by filing a request for arbitration on the prescribed arbitration request form. The arbitrator shall conduct the hearing within 30 days of the request for arbitration. The arbitrator may schedule the arbitration beyond the 30 day timeframe with the agreement of the parties.

G. The arbitrator shall issue a binding written decision, which shall be a public record. The decision shall be issued and filed with the secretary of state within 30 days of the arbitration hearing.

H. Failure to respond to the notice of final action may result in a referral to the attorney general's office or district attorney's office.

[1.10.13.15 NMAC - N, 10/03/2017]

1.10.13.16 LOANS:

A. All loans made to a candidate, campaign committee, or political committee, including loans sourced from a candidate's own personal funds must be reported.

B. Contribution limits apply to loans, unless the loan is sourced from the candidate's own personal funds in accordance with Section 1-19-34.7(F).

C. If a spouse of a candidate co-signs a commercial loan to a candidate pledging community assets as collateral, it is not considered a contribution from the spouse to the candidate as long as the candidate's interest in the community asset meets or exceed the amount of the loan.

D. Loan repayments and forgiven loans must be reported separately from other expenditures within the loan module of CFIS.

[1.10.13.16 NMAC - N, 10/03/2017]

1.10.13.17 CAMPAIGN DEBTS:

A. Campaign debts may not exceed available campaign funds unless the debt is a loan. Loans from a third party must conform to contribution limits.

B. Following the date of the primary or general election, if a candidate has outstanding debts after expending all available campaign funds, the candidate may collect contributions for the sole purpose of paying those debts.

C. The contributions will apply to the primary or general election cycle for which the campaign debt was incurred for purposes of computing allowable contribution limits.

D. A candidate who does not have net outstanding campaign debt may not collect contributions for a primary or general election cycle that has ended.

E. A candidate may not transfer funds collected specifically to satisfy campaign debt to a subsequent primary or general election cycle. Accordingly, contributions collected for the purpose of paying off outstanding campaign debts may not exceed the amount of the outstanding debts.

[1.10.13.17 NMAC - N, 10/03/2017]

1.10.13.18 IN-KIND CONTRIBUTIONS:

A. In-kind contributions must be reported with either the actual value of the contribution or, if an actual value is not available, an estimated value of the contribution may be used.

B. Coordinated expenditures are treated as in-kind contributions and must be reported as such.

C. If a committee or person makes an in-kind contribution that benefits multiple candidates, the candidate must report the estimated per capita benefit received by the candidate's campaign.

D. Goods, such as facilities, equipment, or supplies, are valued at the price the item or facility would have cost if purchased or rented at the time the contribution was made.

[1.10.13.18 NMAC - N, 10/03/2017]

1.10.13.19 VOLUNTEERS:

A. Volunteer work performed for a candidate or campaign committee is not considered a contribution. An individual may volunteer his or her own personal services to a campaign or candidate if the services are not compensated by the candidate, campaign or any other person. If a third party pays a person to volunteer for a candidate or campaign committee, the payment constitutes an in-kind contribution to the campaign committee which must be reported by the campaign committee.

B. Individuals may use their own homes or the recreation or meeting rooms of complexes or other facilities to conduct volunteer activities for a campaign committee.

C. Candidates and campaigns may reimburse volunteers for out of pocket expenses other than the value of their time. Such expenses must be reported.

[1.10.13.19 NMAC - N, 10/03/2017]

1.10.13.20 CONTRIBUTIONS:

A. The entire amount paid by a donor to attend a political fundraiser or other political event or to purchase a fundraising item sold by a candidate is a contribution and counts against the donor's limit for political contributions, except for special events.

B. Contributions received as a result of special events shall be reported on the special events form in CFIS. Reporting individuals shall report the sponsor of the event, the amount received (gross proceeds), the expenditures incurred, the estimated number of persons in attendance, and the net amount received after deducting the expenditures incurred in conducting the event (net proceeds).

C. For all other fundraising events at which the price of admission exceeds \$15, or which raise more than \$1,000 in net proceeds, the reporting individual must report the names of each individual contributors and may not report the net proceeds as a special event.

D. No single anonymous contribution may be accepted in excess of \$100. No more than \$500 may be accepted in aggregate anonymous contributions for any non-statewide candidate in a primary or general election cycle. No more than \$2000 may be accepted in aggregate anonymous contributions for any statewide candidate or political committee in a primary or general election cycle.

E. A candidate's spouse and family are subject to the same contribution limits to the candidate's campaign as other contributors, provided, however, that a candidate may contribute from a joint account with a spouse or family member without limit if the funds would otherwise be available to the candidate in the regular course of business, or as community property or as a joint tenant.

F. The personal funds of a candidate include:

(1) assets which the candidate has the legal right of access to or control over, and which he or she has legal title to or an equitable interest in, at the time of candidacy;

(2) income from employment, including self-employment;

(3) dividends and interest from and proceeds from sale or liquidation of stocks, real estate or other investments;

(4) income from trusts, if established before the commencement of a primary or general election cycle, if it is a trust established by a bequest at any time;

(5) bequests to the candidate;

(6) personal gifts that have been customarily received by the candidate prior to the commencement of a primary or general election cycle; and

(7) proceeds from lotteries or games of chance.

G. The reporting individual, including the candidate or treasurer of a committee, is responsible for ensuring that all contributions are lawful. If the reporting individual has reason to suspect that a contribution is excessive or prohibited, he or she must, within 10 days of receiving the contribution, correct the discrepancy.

[1.10.13.20 NMAC - N, 10/03/2017]

1.10.13.21 CANDIDATE DESIGNATIONS OF CONTRIBUTIONS OVER THE LIMIT:

A. When a person makes a contribution above the contribution limits to a candidate in the primary cycle, the candidate may re-designate the excessive portion to the general election if the contribution:

(1) is made during that candidate's primary election cycle;

(2) is not designated in writing for a particular election;

(3) would be excessive if treated as a primary election contribution; and

(4) if re-designated, does not cause the contributor to exceed any contribution limit.

B. If a candidate receives a contribution for the general election prior to the start of the general election cycle that candidate must segregate those funds and not use them until the start of the general election cycle.

C. A candidate who receives funds in the primary election cycle that are designated for use in the general election cycle and who loses the primary election must return the funds to the original donor or must donate the excessive contribution to the public election fund. A candidate or committee must disclose refunds of contributions in reports filed in CFIS using the refund contributions option.

[1.10.13.21 NMAC - N, 10/03/2017]

1.10.13.22 EXCESSIVE OR PROHIBITED CONTRIBUTIONS:

A. Excessive or prohibited contributions may be returned to the donor if the candidate or committee voluntarily returns the contribution without a finding of violation by the secretary of state. If the secretary of state makes a formal finding that an excessive or illegal contribution has been received by a candidate or committee, the candidate or committee shall forfeit the excessive or illegal contribution in accordance with Section 1-19-34(D) or Section 1-19-34.7(E).

B. The reporting individual must check committee records regularly to reasonably ensure that aggregate contributions from one contributor do not exceed the contribution limits of the Campaign Reporting Act.

C. When an excessive contribution is made via written instrument with more than one individual's name on it, but only has one signature, the permissible portion may be attributed to the signer and the excessive portion may be attributed to the other individual whose name is printed on the written instrument, without obtaining a second signature. This may be done so long as the reattribution does not cause the other contributor to exceed any contribution limit.

D. An excessive contribution which is not designated for either the primary or general election cycle, and which is made after the primary, but before the general election, may be applied to the outstanding debts from the primary election cycle if the campaign committee has more net debts outstanding from the primary election cycle than the excessive portion of the contribution. The re-designation must not cause the contributor to exceed any contribution limits.

E. Contributions and donations may not be solicited, accepted, received from, or made directly or indirectly by, foreign nationals who do not have permanent residence in the United States (U.S.).

[1.10.13.22 NMAC - N, 10/03/2017]

1.10.13.23 DATE CONTRIBUTION IS MADE vs DATE OF RECEIPT:

A. A contribution is "made" by the contributor when the contributor relinquishes control over it. If the contributor hand delivers a contribution, the contribution is made on the delivery date. If mailed, a contribution is made on the date of the postmark. An in-kind contribution is made on the date that the goods or services are provided by the contributor. A contribution made via the internet is considered made on the date the contributor electronically confirms the transaction.

B. The date of receipt is the date the candidate, committee or person acting on the committee's behalf, actually receives the contribution. This is the date that shall be used to report the contribution. The date of deposit is not used for reporting or contribution limit purposes.

C. When a contribution is received through debit or credit card charges, the date of receipt is the date on which the contributor's signed or electronic authorization to charge the contribution is received by the candidate, committee or a person acting on the committee's behalf.

D. The date of receipt of in-kind contributions is the date the goods or services are provided to the recipient.

[1.10.13.23 NMAC - N, 10/03/2017]

1.10.13.24 EARMARKING:

A. It is unlawful for a person to make a contribution in the name of another person and no reporting entity shall knowingly accept a contribution from one person in the name of another person.

B. A reporting individual shall not knowingly accept a contribution which was earmarked by an original donor for contribution from a subsequent donor to the candidate or committee unless the original donor is disclosed in the candidate's or political committee's reporting. .

C. All contributions made by a person, either directly or indirectly, including contributions that are in any way earmarked or otherwise directed through another person, shall be treated as contributions from the person who originally made the contribution.

D. A reporting individual shall not knowingly accept or solicit a contribution, directly or indirectly, including a contribution earmarked or otherwise directed or coordinated through another person which violates the contribution limits.

[1.10.13.24 NMAC - N, 10/03/2017]

1.10.13.25 CANDIDATE EXPENDITURES:

A. Candidates who use the candidate's own personal funds for expenditures of the campaign committee must report the funds as either contributions to the campaign committee, which cannot be repaid to the

candidate, or as loans to the campaign committee, which can be repaid from other campaign contributions received by the campaign committee. A candidate may also pay for expenditures of the campaign committee out of personal funds and obtain reimbursement from the campaign committee, but the campaign committee must itemize the expenditures reimbursed. A candidate may not, for instance, report a single payment to a credit card in lieu of reporting each individual expenditure paid for out of personal funds. Use of a credit card specifically designated for campaign expenses is permissible but expenditures must be itemized when reported.

B. Permissible Expenditures.

(1) Use of campaign funds must be in accordance with Section 1-19-29.1. Candidates and committees must provide a purpose or description detailed enough to associate the expense to the campaign. For example, an expense of “taxi” is not appropriately descriptive to determine that it is related to a campaign. Such an expense should be reported as “taxi for travel to campaign meeting.”

(2) Expenditures that are reasonably attributable to the candidate’s campaign and not to personal use or personal living expenses are permissible campaign expenditures. Personal use of campaign funds is any use of funds in a campaign account to fulfill a commitment, obligation or expense of any candidate or legislator that would exist regardless of the candidate’s campaign or responsibilities as a legislator. If the expense would exist even in the absence of the candidacy, or even if the legislator were not in office, then it is not considered to be a campaign-related expenditure.

(3) Legal expenses specifically related to the campaign or legislative office are permissible uses of campaign funds. Such expenses include, but are not limited to, presenting a legal challenge to an opponent’s qualifications for election, participating in such a challenge or defending such a challenge. Permissible legal expenditures also include defending or filing a complaint with the office of secretary of state or any ethics authority.

(4) Candidates and public officials shall not use campaign funds to pay any fine or penalty imposed by the secretary of state or any court of competent jurisdiction.

(5) Political committees may use campaign funds to pay fines and penalties imposed by the secretary of state.

(6) Wear and tear on a vehicle is a permissible expense of the campaign and candidates shall claim mileage rather than actual repairs for travel solely related to the campaign. Mileage shall be calculated at no more than the published rate pursuant to the Mileage and Per Diem Act. Candidates must keep a log for the candidate’s own records regarding miles traveled for campaign purposes and calculate the per diem based on this log. Mileage rates are meant to account for both wear and tear on a vehicle as well as costs for gas, therefore, candidates may not charge for both gas and mileage.

(7) A candidate, candidate’s agent, or committee’s agent may seek an agency opinion or declaratory ruling from the secretary of state on the lawfulness of expenditures made prior to the campaign committee facing an enforcement action. A declaratory ruling made by the secretary of state shall be issued in accordance with the Administrative Procedures Act, NMSA 1978 Section 12-8-9. To the extent that an expenditure is determined unlawful pursuant to an agency declaratory ruling, the campaign committee shall be given the opportunity to amend any inconsistent reports and take other necessary steps to come into voluntary compliance. [1.10.13.25 NMAC - N, 10/03/2017]

1.10.13.26 CHARITABLE DONATIONS:

A. Donations to charity from campaign funds permitted under Section 1-19-29.1(A)(4) may be paid only to organizations recognized, at least preliminarily, as tax exempt under Section 501(c)3 of the Internal Revenue Code of 1986.

B. The candidate or committee making a charitable donation is responsible for determining whether the charity has the permissible tax status prior to making the donation. [1.10.13.26 NMAC - N, 10/03/2017]

1.10.13.27 PRIMARY AND GENERAL ELECTION CYCLES FOR PURPOSES OF CONTRIBUTION LIMITS

A. For state representatives and any other two year office holders, the primary election cycle begins the day after each general election and ends at midnight on the day of the primary election. The general election cycle begins on the day after each primary election and ends at midnight on the day of the general election.

B. For statewide office holders and any other four year office holders and for political committees, the primary election cycle begins on the day after the general election in which the office is on the ballot, or included in governor’s primary election proclamation, and ending at midnight on the day of the primary election in

which the office appears on the ballot. The general election cycle begins on the day after the applicable primary election and ends at midnight on the day of the general election.
[1.10.13.27 NMAC - N, 10/03/2017]

1.10.13.28 COORDINATED EXPENDITURES:

A. A coordinated expenditure shall be treated as an in-kind contribution from the person who made the expenditure to the candidate or committee at whose request or suggestion, or in cooperation, consultation or concert with whom, the expenditure was made, and shall be subject to all the limits, prohibitions and reporting requirements that are applicable to such contributions under the Campaign Reporting Act.

B. Candidates for office may endorse other candidates. Endorsements do not constitute a coordinated expenditure unless the endorser pays for an advertisement that constitutes a coordinated expenditure.

C. A candidate's or committee's response to an inquiry or questionnaire about that candidate's positions on legislative or policy issues, which does not include discussion of campaign plans, projects, activities or needs, does not constitute a coordinated expenditure.

D. Persons may use publicly available information and materials in creating, producing or distributing an advertisement, and such use does not, in and of itself, constitute coordination with the candidate or campaign. However, expenditures funding the republication of materials produced by a candidate's campaign may be treated as coordinated expenditures subject to contribution limits.

E. The following non-exhaustive list shall be considered to determine whether an expenditure is a coordinated expenditure:

- (1) whether the person making the expenditure is also an agent of a candidate or committee;
- (2) whether any person authorized to accept receipts or make expenditures for the person making the expenditure is also an agent of a candidate or committee;
- (3) whether the person making the expenditure has been established, financed, maintained, or controlled by any of the same persons that have established, financed, maintained, or controlled a political committee authorized by the candidate;
- (4) whether the reporting individual shares or rents space for a campaign-related purpose with or from the person making the expenditure;
- (5) whether the reporting individual, or any public or private office held or entity controlled by the reporting individual, including any governmental agency, division, or office, has retained the professional services of the person making the expenditure or a principal member or professional or managerial employee of the entity making the expenditure, during the same election cycle, either primary or general, in which the expenditure is made; or
- (6) whether the reporting individual and the person making the expenditure have each consulted or otherwise been in communication with the same third party or parties, if the reporting individual knew or should have known that the reporting individual's communication or relationship to the third party or parties would inform or result in expenditures to benefit the reporting individual.

[1.10.13.28 NMAC - N, 10/03/2017]

1.10.13.29 RECORDS RETENTION:

A. A reporting individual, including candidates and committees, shall obtain and preserve all records, including bank statements and receipts, necessary to substantiate the campaign finance reports required pursuant to the Campaign Reporting Act for a period of two years from the date of the filing of the report containing such items.

B. Such records shall be made available to the secretary of state, attorney general or district attorney upon written request.

[1.10.13.29 NMAC - N, 10/03/2017]

1.10.13.30 RANDOM REPORT SELECTION AND REPORT REVIEW PROCESS:

A. Pursuant to Section 1-19-32.1, a randomly selected list of current and past candidates and political committees is computer generated by the secretary of state.

B. The secretary of state conducts a review of the reports filed during the election year or reporting period being reviewed for compliance with 1.10.13 NMAC and the Campaign Reporting Act. Areas of review during the report examination include:

- (1) Campaign committees or political committees who fail to register or fail to register timely.

- (2) Contributions, including loans and anonymous contributions, which exceed allowable contribution limits.
- (3) Expenditures that may not be permissible.
- (4) To the extent possible, cross checking with other reporting entities including those filing under the Lobbyist Regulation Act.

C. Pursuant to Section 1-19-32.1, the secretary of state shall notify potential violators that a possible discrepancy has been found and allow the candidates or committees ten working days from the date of the notice to submit a written explanation.

D. After a written response is received, the secretary of state will issue a notice of final action which may include dismissal of the finding upon explanation or correction or could include a penalty pursuant to Section 1-19-34.4.

E. Upon completion of the random review, the secretary of state shall generate a report that details the findings and actions taken by the candidates, committees, and the secretary of state which shall be made publicly available.

[1.10.13.30 NMAC - N, 10/03/2017]

1.10.13.31 DISCLAIMER NOTICES ON ADVERTISEMENTS:

A. The disclaimers on campaign advertising mandated by Sections 1-19-16 and 1-19-17 NMSA will be required only for:

(1) advertisements that are disseminated by a candidate, a candidate's campaign committee or a political party, or at the request or suggestion of, or in cooperation, consultation or concert with, a candidate, a candidate's campaign committee or a political party; and

(2) advertisements that are disseminated by a person who has made independent expenditures in an aggregate amount exceeding \$1,000 during the current election cycle, and that either:

(a) expressly advocate the election or defeat of a clearly identified candidate or the passage or defeat of a clearly identified ballot measure, or

(b) refer to a clearly identified candidate or ballot measure and are disseminated to the relevant electorate within 30 days before the primary election or 60 days before the general election at which the candidate or ballot measure is on the ballot.

B. The requirements of Subsection A of this section do not apply to the following:

(1) bumper stickers, pins, buttons, pens and similar small items upon which the disclaimer cannot be conveniently printed; or

(2) skywriting, water towers, wearing apparel or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable.

C. The disclaimer statements required by Subsection A of this section shall be set forth legibly on any advertisement that is disseminated or displayed by visual media. If the advertisement is transmitted by audio media, the statement shall be clearly spoken during the advertisement. If the advertisement is transmitted by audiovisual media, the statement shall be both written legibly and spoken clearly during the advertisement.

[1.10.13.31 NMAC - N, 10/03/2017]

HISTORY OF 1.10.13 NMAC: [RESERVED]