

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE and ADMINISTRATION (DFA)
JOINT POWERS AGREEMENT (JPA) BRIEF

DFA Office of the Secretary
Bataan Memorial Bldg., Suite 180
Santa Fe, New Mexico 87501
(505) 827-4985

Agencies must complete and transmit this form along with all backup documentation to the DFA.

PRIMARY PARTY: State Ethics Commission
SECONDARY PARTY: Secretary of State
OTHER PARTY: _____
CONTACT NAME: Jeremy Farris PHONE: (505) 490 0251
CONTACT ADDRESS: NASEC, 800 Broadway Dr. SE Ste 217 Albuquerque NM 87106

DOCUMENTS ENCLOSED:	AMOUNT:
<input checked="" type="checkbox"/> JPA	Federal Funds \$ _____
<input type="checkbox"/> JPA Amendment	General Fund \$ _____
<input type="checkbox"/> Purchase Document	Other State Funds \$ _____
<input type="checkbox"/> Written Justification	Local Gov. Funds \$ _____
<input type="checkbox"/> Other	TOTAL \$ _____

Purpose: To provide for shared authority for enforcement of Financial Disclosure Act
Term: Perpetuity From: DFA Execution To: Perpetuity

FOR AN AMENDMENT, LIST THE ORIGINAL JPA EXPIRATION DATE:

Statutory Requirements- Agencies must check each blank CERTIFYING to DFA that the JPA:

- jointly exercises a power common to the parties (Transferring funds from one agency to another does not constitute the joint exercise of power.);
- clearly specifies its purpose;
- establishes the method by which its purpose will be accomplished;
- establishes the manner in which the joint power will exercised;
- provides for strict accountability of all receipts and disbursement;
- addresses disposition, division, distribution and ownership of any property acquired as the result of the joint exercise of power; and
- specifies that any surplus money shall be returned in proportion to the contributions made.

Other Requirements - Agencies must enter Y (Yes), N (No), or N/A (Not Applicable) to each of the following:

- Y Is one original and at least two copies of the JPA or amendment attached? (DFA will forward copies to the contact.)
- Y Does the JPA or amendment have original signatures executed by authorized officers, employees or other representatives empowered to bind their respective entities?
- NA Are all exhibits referred to in the JPA attached?
- N Does the JPA provide for the expenditure or transfer of public funds by a state agency? (All public money must be budgeted.)
- N Does the JPA provide for the transfer of local, state or federal funds to a state agency? If the answer is yes, cite or attach the legislative authority permitting the receiving state agency to increase its budget from such a transfer.
- N If the JPA or amendment start date is prior to the date submitted to DFA or, if the original JPA has expired, is a justification letter requesting retroactive approval attached? (A detailed, letter explaining the circumstances must be signed by the agency head of one of the parties.)
- Y Has the JPA or amendment been reviewed by legal counsel? If yes, state Who Tanya Herring (SAC)
Walter Boyd (SAC)

Agency Head Signature [Signature] Title Executive Director

JOINT POWERS AGREEMENT
FOR SHARED JURISDICTION UNDER THE FINANCIAL DISCLOSURE ACT
BETWEEN
THE NEW MEXICO STATE ETHICS COMMISSION
AND
THE NEW MEXICO SECRETARY OF STATE

THIS JOINT POWERS AGREEMENT (“JPA”) is entered into by and between the New Mexico State Ethics Commission (“SEC”) and the New Mexico Secretary of State (“SOS”), collectively the “Parties.”

WHEREAS, the Parties are authorized by the Joint Powers Act, NMSA 1978, Sections 11-1-1 to 7 (2009) to enter into this Agreement;

WHEREAS, Article 5, Section 17 of the New Mexico Constitution creates the SEC;

WHEREAS, the Legislature enacted the State Ethics Commission Act, NMSA 1978, Sections 10-16G-1 through -16, and enabled the SEC;

WHEREAS, the State Ethics Commission Act, NMSA 1978, Section 10-16G-9(A)(2), confers on the SEC the jurisdiction to enforce the applicable civil compliance provisions of the Financial Disclosure Act for public officials, public employees, candidates, persons subject to the Campaign Reporting Act, government contractors, lobbyists and lobbyists’ employers;

WHEREAS, the Financial Disclosure Act, NMSA 1978, Section 10-16A-6 confers on the SEC jurisdiction to investigate and adjudicate a complaint alleging a civil violation of the Financial Disclosure Act;

WHEREAS, the Financial Disclosure Act, NMSA 1978, Section 10-16A-8 confers on the SEC the authority to institute a civil action in district court or to refer the matter to the Attorney General or a district attorney if a violation has occurred or to prevent a violation of any provision of the Financial Disclosure Act;

WHEREAS, the State Ethics Commission Act, NMSA 1978, Section 10-16G-9(F), confers on the SEC the authority to file a court action to enforce the civil compliance provisions of the Financial Disclosure Act;

WHEREAS, under the Financial Disclosure Act, NMSA 1978, Section 10-16A-6(A), the SEC and the SOS may conduct examinations of statements and initiate investigations to determine whether the Financial Disclosure Act has been violated;

WHEREAS, under the Financial Disclosure Act, NMSA 1978, Section 10-16A-5, the SOS is authorized to refer violations of the Financial Disclosure Act to the SEC for civil enforcement but

only after the SOS's efforts to secure voluntary compliance with the Financial Disclosure Act have failed;

WHEREAS, the Parties seek to jointly cooperate in the enforcement and administration of the Financial Disclosure Act and the State Ethics Commission Act;

WHEREAS, the Parties agree that it is in their best interests to delineate the shared jurisdiction conferred on them by the Financial Disclosure Act and the State Ethics Commission Act through this Joint Powers Agreement; and

WHEREAS, the Parties enter into this JPA to facilitate the Parties' concurrent jurisdiction over the Financial Disclosure Act, as contemplated by NMSA 1978, Sections 10-16A-5, 10-16A-6, and 10-16G-9(C)-(E).

NOW, THEREFORE, the Parties agree as follows:

I. DEFINITIONS: The following terms are defined as follows:

A. **Complainant:** a person who files a written complaint with the SOS or the SEC alleging a violation of the Financial Disclosure Act;

B. **Respondent:** a person against whom a complaint alleging a violation of the Financial Disclosure Act has been filed;

C. **Internal Compliance Violation:** a violation of the Financial Disclosure Act identified by the SOS based on incomplete, misleading, false or incorrect statements or a failure to file statements or failure to file timely statements; and

D. **External Complaint:** a complaint not generated by the SOS, and filed by a Complainant.

All terms in this Agreement have the same meaning as defined under the Financial Disclosure Act.

II. PARTIES' SHARED JURISDICTION. The Parties' shared jurisdiction to investigate, adjudicate, and enforce the provisions of the Financial Disclosure Act will be administered according to the following provisions:

A. **External Complaints:** Where an external complaint alleging a Financial Disclosure Act violation is filed with the SOS or the SEC or contemporaneously with both the SOS and the SEC, the following procedures will apply:

1. If the SEC receives any written complaint alleging a violation of the Financial Disclosure Act, the SEC shall forward that part of the complaint alleging the Financial Disclosure Act violation to the SOS, and the SEC shall promptly inform the complainant and the respondent that the complaint has been referred under the terms of this JPA, as authorized by NMSA 1978, Sections 10-16A-6(A) and 10-16G-9(C) & (D).

2. If a complaint alleging a Financial Disclosure Act violation is filed contemporaneously with the SOS and the SEC, the SEC will hold in abeyance any action on the complaint until the SOS has determined whether there is a violation of the Financial Disclosure Act and, if so, whether the SOS has achieved voluntary compliance.
3. In accordance with the Financial Disclosure Act, NMSA 1978, Section 10-16A-6(A), the SOS will review all external complaints and complaints referred by the SEC that allege a violation of the Financial Disclosure Act.
4. After the SOS has reviewed the written complaint and if applicable, any response provided by the respondent, the SOS, within 30 days, will make a determination as follows:
 - a) no Financial Disclosure Act violation has occurred;
 - b) a violation of the Financial Disclosure Act has occurred; or
 - c) the SOS is unable to make a determination because further investigation and/or fact-finding are needed.
5. If the SOS determines that no violation of the Financial Disclosure Act has occurred, the SOS will send its written determination to the complainant, and the respondent, and will forward a copy of the complaint and the “no violation” determination to the SEC.
6. If the SOS determines that a violation of the Financial Disclosure Act has occurred, the SOS will seek to achieve voluntary compliance pursuant to NMSA 1978, Section 10-16A-5(B).
 - a) If the SOS achieves voluntary compliance from a respondent that the SOS determines committed a Financial Disclosure Act violation, then the SOS will forward to the SEC both the complaint and the SOS’s written notice of final action partially or fully waiving any fine imposed, in accordance with NMSA 1978, Section 10-16A-5(B).
 - b) If the SOS does not achieve voluntary compliance from a respondent that the SOS determines committed a Financial Disclosure Act violation, then pursuant to NMSA 1978, Section 10-16A-5(B), the SOS will refer the matter to the SEC for potential civil enforcement through a court action, pursuant to NMSA 1978, Sections 10-16A-8(B) and 10-16G-9(F).
 - c) Referral to the SEC does not limit or prohibit the SOS from also referring the matter to the attorney general or a district attorney for enforcement of criminal penalties pursuant to NMSA 1978, Section 10-16A-6 (2019).
7. If, after reviewing a complaint forwarded by the SEC, the SOS is unable to determine whether a respondent has violated the Financial Disclosure Act, then the SOS shall return to the SEC a copy of the complaint and any responding documentation, if available, for the SEC’s use in investigating and adjudicating the complaint in accordance with NMSA 1978, Section 10-16A-6(A). The SOS will also forward to the SEC any

correspondence between the SOS and any person alleged to have committed a Financial Disclosure Act violation.

a) The SEC, at its discretion, may then handle the complaint through the SEC's administrative process, pursuant to the procedures provided for in the State Ethics Commission Act and Section 1.8.3 NMAC. If, as a result of that process, the Commission concludes that the respondent violated the Financial Disclosure Act and that a penalty should be imposed, the respondent may request binding arbitration under NMSA 1978, Section 10-16A-6(B) through (D).

b) Alternatively, the SEC, at its discretion, may pursue the matter for potential civil enforcement through a court action, pursuant to NMSA 1978, Sections 10-16A-8(B) and 10-16G-9(F).

B. Internal Compliance Violations: Where the SOS identifies a violation of the Financial Disclosure Act based on incomplete, misleading, false or incorrect state or a failure to file statements or failure to file timely statements, the SOS will seek to ensure voluntary compliance pursuant to NMSA 1978, Section 10-16A-5(B).

1. If the SOS achieves voluntary compliance from a person that the SOS determines committed a Financial Disclosure Act violation, then the SOS will forward to the SEC, the SOS's written notice of final action partially or fully waiving any fine imposed in accordance with NMSA 1978, Section 10-16A-5(B).

2. If the SOS does not achieve voluntary compliance from a person that the SOS has internally identified committed a Financial Disclosure Act violation, then pursuant to NMSA 1978, Section 10-16A-5(B), the SOS will refer the matter to the SEC for potential civil enforcement through a court action, pursuant to NMSA 1978, Sections 10-16A-8(B) and 10-16G-9(F). The SOS or the SEC may also refer the matter to the attorney general or a district attorney for enforcement pursuant to NMSA 1978, Section 10-16A-8.

C. Concurrent Jurisdiction: To facilitate concurrent jurisdiction over complaints that are separately or contemporaneously filed with the Parties, the SOS will forward to the SEC on a monthly basis, a list of the complaints they have received alleging a civil violation of a provision of the Financial Disclosure Act.

1. The SEC and the SOS will confer at least monthly to review the list of complaints forwarded by the SOS to the SEC and those complaints jointly received by both Parties.

2. The SEC will forward to the SOS the disposition of any complaint alleging a violation of the Financial Disclosure Act.

III. TRAININGS. The SEC may offer annual ethics training to public officials, public employees, government contractors, lobbyists and other interested persons under the State Ethics Commission Act, NMSA 1978, Section 10-16G-5(C)(5). The SOS is mandated to advise and educate all persons required to perform duties under the Financial Disclosure Act of those duties

under NMSA 1978, Section 10-16A-5(A). The Parties will coordinate and cooperate when appropriate on ethics training and/or education for SEC members, other public officials, reporting individuals or interested parties as related to the Financial Disclosure Act.

IV. TERM AND TERMINATION. This JPA is effective as of the date of the Department of Finance and Administration's Cabinet Secretary's signature. It shall continue in full force in perpetuity, unless amended or terminated by either Party, which termination shall be accomplished by a Party giving the other Party a minimum of thirty (30) days' advance written notice of the termination.

V. PROPERTY DISPOSITION. There will not be any property acquired by either Party under the terms of this JPA. If the Parties acquire any property or funds related to this JPA then "after the completion of the agreement's purpose any surplus money on hand shall be returned [to the respective Party] in proportion to the contributions made." NMSA 1978, § 11-1-4(F).

VI. RECORDS. Records acquired during the term of this JPA will be public records and subject to public disclosure under the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 to 12, and the State Ethics Commission Act, NMSA 1978, Sections 10-16G-1 to -16.

VII. RESPONSIBILITY. The SEC and the SOS will be responsible for their own actions under all applicable law and regulations.

VIII. FINANCIAL CONTRIBUTION. There shall not be a financial contribution by or to either Party under the terms of this JPA unless otherwise agreed to in writing.

IX. AMENDMENTS. The JPA shall not be changed, altered or amended except by an instrument in writing executed by the Parties and with agreement of both Parties and approved by the Department of Finance and Administration.

X. APPROPRIATIONS. The Legislature has not appropriated funds to either Party to manage the JPA.

XI. RESERVATION OF POWER. Nothing in this agreement may be construed to limit the SEC's power to initiate a civil action in district court under NMSA 1978, Section 10-16G-9(F) or any investigation related to the exercise of that power.

XII. THIRD PARTY BENEFICIARIES. The benefits of the JPA inure only to the Parties. No third party beneficiaries are anticipated or specified under the JPA.

XIII. GOVERNING LAW. The JPA shall be governed by the laws of the State of New Mexico.

XIV. WRITTEN NOTICE. All notices, demands, requests, consents, and approvals required or permitted to be given pursuant to this JPA will be in writing signed by the notifying party or its agent(s) and will be deemed effective upon delivery or receipt. Parties to be given written notice as necessary are as follows:

State Ethics Commission:
Jeremy D. Farris, Executive Director
800 Bradbury Dr. SE, Suite 217

Albuquerque, NM 87106

Office of the Secretary Of State:
Maggie Toulouse Oliver, Secretary of State
325 Don Gasper, Suite 300
Santa Fe, NM 87501

XV. AGREEMENT BINDING ON SUCCESSORS. This JPA shall be binding upon the successors and assigns of the parties hereto.

XVI. SEVERABILITY. If any provision of this JPA is held invalid, the remainder of this JPA shall not be affected thereby and such remainder would constitute the Agreement, unless the provision held invalid was such as to make the fulfillment of the purpose of this JPA impossible or impracticable.

XVII. TORT CLAIMS ACT. By entering into this JPA, the parties and their "public employees" as defined in the New Mexico Tort Claims Act, NMSA 1978, Section 41-1-4 et seq. do not waive sovereign immunity or any defense or limitation of liability pursuant to law. No provision in this JPA modifies or waives any provision of the New Mexico Tort Claims Act.

XVIII. EXECUTION. This JPA shall be executed in three (3) originals.

IN WITNESS WHEREOF, the parties have executed this JPA which becomes effective as of the date of approval by the Department of Finance and Administration.

By: Maggie Toulouse Oliver
Maggie Toulouse Oliver
Secretary of State

Date: 12/12/19

By: Jeremy D. Farris
Jeremy D. Farris
State Ethics Commission, Executive Director

Date: 12/12/2019

APPROVED:

Department of Finance and Administration
Olivia Padilla-Jackson
Olivia Padilla-Jackson, Cabinet Secretary

Date: 12/20/19