

2016

New Mexico Secretary of State's Office



Guide to Public Financing

VOTER ACTION ACT

The information contained in this guide is intended for use as a reference for candidates interested in applying for public financing for the 2016 election cycle. We encourage you to always refer to the Voter Action Act, NMSA Sections 1-19A-1 to 1-19A-17, (“VAA”) as the ultimate legal authority.

Our office will assist candidates and/or their campaign treasurers with the Voter Action Act process. If you have elected to pursue public financing, we strongly suggest you review the VAA as well as this guide before beginning the process of public financing. You are welcome to contact the Secretary of State’s Bureau of Elections for further information. Please contact our Ethics Division, and they can provide you with required forms, and assist with any questions regarding application procedures. The Division contact information is listed below:

Telephone: (505) 827-3600 / (800) 477-3632

Email: sos.ethics@state.nm.us

For your convenience we have made this Guide as well as all necessary VAA forms and information on our webpage at the following link:

[http://www.sos.state.nm.us/Candidate And Pac Information/Voter Action Act.aspx](http://www.sos.state.nm.us/Candidate%20And%20Pac%20Information/Voter%20Action%20Act.aspx)

This guide was revised on November 3, 2015 to reflect changes to procedure in the Voter Action Act for appellate judicial candidates due to amendments in Canon 4 of the New Mexico Code of Judicial Conduct, which become effective November 1, 2015. The changes occur on pages 11 and 15.

What is public financing?

The VAA provides certain candidates with an opportunity to apply for public funds to finance their campaigns. The funds are held by the state treasury in the public election fund (“the Fund”) and disbursed to certified candidates after their certification. Candidates who qualify for and receive a distribution of funds under the VAA are subject to the Campaign Practices Act, as well as some additional requirements under the VAA. Specifically, candidates who are applying for public financing may not collect contributions not specifically authorized by the VAA and candidates certified to receive public financing may not collect contributions from sources other than the Fund. Certified candidates will receive two distributions from the Fund; one for the primary election and one for the general election.

The calculations for qualifying contributions and fund disbursements are based upon the number of registered voters as of July 30, 2015. This date was selected because candidates may start raising seed money contributions as of August 2, 2015. The number of qualifying contributions and the amount of fund distributions for both the primary and general elections are ***not readjusted based upon voter registration growth or decline over the election cycle.***

There are some key terms that are important to understand when reviewing this Guide:

Applicant candidate: A candidate who is running for a covered office and who is seeking to be a certified candidate and obtain public financing.

Certified candidate: A candidate running for a covered office who has applied and been certified to obtain public financing.

Seed money: A contribution raised for the primary purpose of enabling applicant candidates to collect qualifying contributions and petition signatures.

Qualifying contribution: A donation in the amount of five dollars (\$5.00) in support of an applicant candidate. There are specific restrictions and requirements of making and accepting a qualifying contribution that are outlined herein in further detail.

For a complete list of terms used in the VAA, please see NMSA 1978 § 1-19A-2.

What offices are eligible to apply for public financing?

The VAA applies to statewide judicial elections (New Mexico Supreme Court Justices and New Mexico Court of Appeals Judges) and the office of Public Regulation Commissioner. The VAA specifically excludes judicial retention elections from eligibility for public financing.

The following *covered offices* are eligible to apply for public financing in the 2016 election cycle:

1. *Justice of the Supreme Court*
2. *Judge of the Court of Appeals*
3. *Public Regulation Commissioner – District #1*
4. *Public Regulation Commissioner – District #3*

How do candidates apply for public financing?

Once a candidate has decided to apply for public financing he or she should first file a Declaration of Intent with the Secretary of State's Office. Upon filing the Declaration of Intent to pursue public financing, a candidate becomes an applicant candidate and is subject to all of the provisions and requirements of the VAA. The Declaration of Intent form is available on the Secretary's website as provided on Page 2.

A candidate may not collect qualifying contributions before filing their Declaration of Intent with the Secretary of State. A candidate may collect seed money prior to filing their Declaration of Intent. Applicant candidates are required to report their seed money contributions and expenditures in the Secretary of State's online Campaign Finance Information System (CFIS).

A candidate becomes ineligible for public financing once he or she has accepted contributions totaling five hundred dollars (\$500) or more or made expenditures totaling five hundred dollars (\$500) or more between the beginning of the qualifying period and filing a Declaration of Intent.

SEED MONEY

What are the restrictions on the amount of seed money that may be collected?

1. An applicant candidate **may** collect seed money from individual donors and political action committees in amounts of no more than one hundred dollars (\$100) per donor or committee.
2. An applicant candidate **may** contribute an amount of seed money from the applicant candidate's own funds up to the limits of five thousand dollars (\$5,000).
3. An applicant candidate **may** collect and spend seed money during the sixty days immediately preceding the qualifying period and throughout the qualifying period.

When can seed money be collected?

Major Parties

Major party applicant candidates may collect seed money beginning August 2, 2015 through March 15, 2016. The qualifying period begins on October 1, 2015, so candidates may begin collecting seed money 60 days prior or on August 2, 2015.

Minor and Independent Parties

Minor and independent party applicant candidates may collect seed money beginning December 3, 2015 through June 30, 2016. The qualifying period begins February 1, 2016, so independent and minor party candidates may begin collecting seed money contributions 60 days prior or on December 3, 2015.

What are the restrictions on seed money?

1. An applicant candidate **may not** collect seed money from a corporation, association or partnership formed under state law or from labor organizations.
2. An applicant candidate **may not** collect or spend seed money for any purpose after becoming a certified candidate and before the end of the election cycle for which the candidate was certified. However, after the election cycle ends a previously certified candidate **may** carry forward any remaining seed money to the next election cycle for use as seed money.
3. If a certified candidate is defeated or is elected and decides not to run again as an applicant candidate, **any unspent seed money shall be forfeited to the Public Election Fund.**

What amount of money will a certified candidate receive?

The fund amount that is distributed to a certified candidate is based upon the number of registered voters that are eligible to vote for certified candidates in their respective elections.

Primary Election:

Contested election

For the office of Public Regulation Commissioner, the amount is twenty-five cents (\$.25) for each voter of the candidate's party in the district of the office for which the candidate is running.

For the office of Justice on the Supreme Court or Judge of the Court of Appeals, the amount is fifteen cents (\$.15) for each voter of the candidate's party in the state.

Democratic Party

<u>Office</u>	<u>Voters</u>	<u>Distribution</u>
PRC District #1	126,177	\$31,544
PRC District #3	141,433	\$35,358
Judicial Office	550,349	\$82,552

Republican Party

<u>Office</u>	<u>Voters</u>	<u>Distribution</u>
PRC District #1	90,539	\$22,635
PRC District #3	68,023	\$17,006
Judicial Office	368,455	\$55,268

Uncontested election: The distribution for an uncontested election is equal to fifty (50%) percent of the amount that is calculated for a contested election.

Democratic Party

<u>Office</u>	<u>Distribution</u>
PRC District #1	\$15,772
PRC District #3	\$17,679
Judicial Office	\$41,276

Republican Party

<u>Office</u>	<u>Distribution</u>
PRC District #1	\$11,318
PRC District #3	\$ 8,503
Judicial Office	\$27,634

General Election:

Contested election:

For the office of Public Regulation Commissioner, the amount is twenty-five cents (\$.25) for each registered voter in the district of the office for which the candidate is running.

For the office of Justice of the Supreme Court or Judge of the Court of Appeals, the amount is fifteen cents (\$.15) for each registered voter in the state.

CONTESTED GENERAL ELECTION

<u>Office</u>	<u>Voters</u>	<u>Distribution</u>
PRC District #1	283,271	\$70,818
PRC District #3	264,630	\$66,158
Judicial Office	1,183,643	\$177,546

Uncontested election: The distribution for an uncontested election is equal to fifty percent of the amount that is calculated for a contested election.

If a general election race that is initially uncontested later becomes contested because of the qualification of an independent or minor party candidate to appear on the ballot for that race, an additional amount of money shall be distributed to the certified candidate to make the candidate's total distribution amount equal to the amount distributed in a contested election as set out above.

UNCONTESTED GENERAL ELECTION

<u>Office</u>	<u>Distribution</u>
PRC District #1	\$35,409
PRC District #3	\$33,079
Judicial Office	\$88,773

What are the restrictions on what contributions may be accepted by an applicant candidate?

1. After becoming an applicant candidate and **prior to certification**, an applicant candidate **shall not** accept contributions, except for seed money or qualifying contributions.
2. A judicial candidate elected prior to 2008 who did not obtain public financing may use campaign funds as seed money if they have filed a declaration of intent to become an applicant candidate in accordance with the VAA.
3. An applicant candidate **shall limit** seed money contributions and expenditures to five thousand dollars (\$5,000).

When is the qualifying period?

The qualifying period is the timeframe in which applicant candidates may collect the required amount of qualifying contributions.

Major Parties

Major party applicant candidates may collect qualifying contributions beginning October 1, 2015 through March 15, 2016.

Independent and Minor Parties

Minor and independent party candidates may collect qualifying contributions beginning on February 1, 2016 through June 30, 2016.

What is a qualifying contribution?

A qualifying contribution is donation of five dollars (\$5.00) in the form of cash, check or money order payable to the Public Election Fund in support of an applicant candidate that is:

1. Made by a registered voter who is eligible to vote for the covered office that the applicant candidate is seeking;
 - a) Registered voters making a qualifying contribution are not required to be members of the candidate's political party; however, if they are donating to an applicant candidate running for the office of PRC, they must be registered voters of the respective district.

- b) Applicant candidates may accept qualifying contributions from registered voters that are members of major parties (democrats/republicans) or registered as independent (declined to state a party affiliation).
2. Made during the designated qualifying period and obtained through efforts made with the knowledge and approval of the applicant candidate; and
 3. Acknowledged by a receipt that identifies the contributor’s name and residential address on forms provided by the Secretary of State’s Office, Bureau of Elections, and that is **signed** by the contributor, a copy of which is attached to the list of contributors and submitted to the Secretary of State’s Office, Bureau of Elections.

What is the number of qualifying contributions needed?

The number of qualifying contributions that an applicant candidate must obtain is determined using the formulas listed below:

1. For all statewide judicial elective offices, the number of qualifying contributions is equal to one-tenth of one percent of the number of voters in the state; and
2. For the Office of Public Regulation Commissioner, the number of qualifying contributions equal to one-tenth of one percent of the number of voters in the district of the office for which the candidate is running.

It is strongly recommended that applicant candidates gather more qualifying contributions than are required to account for any qualifying contributions that are inadvertently collected from an ineligible voter. A good rule of thumb is to collect ten percent (10%) more than is needed, but applicant candidates may collect as many qualifying contributions as they wish. Once submitted to the Secretary of State, qualifying contributions are nonrefundable to candidates or to donors.

MINIMUM NUMBER OF QUALIFYING CONTRIBUTIONS NEEDED:

<u>Covered Office</u>	<u>Number of Registered Voters</u>	<u>Number of Qualifying Contributions</u>	<u>Amount of Qualifying Contributions</u>
PRC District #1	283,271	283	\$1,415 (\$5 x 283)
PRC District #3	264,630	265	\$1,325 (\$5 x 265)
Judicial Office	1,183,643	1184	\$5,920 (\$5 x 1184)

How is an applicant candidate certified?

Upon receipt of qualifying contributions by the applicant candidate, the Secretary of State shall determine whether the applicant candidate has;

1. Signed and filed a Declaration of Intent to obtain public financing pursuant to all requirements set forth in the VAA;
2. Submitted the appropriate number of qualifying contributions;
3. Qualified as a candidate pursuant to other applicable state election laws;
4. Complied with seed money contribution and expenditure restrictions; AND
5. Met the requirements for obtaining public financing pursuant to the VAA;

The Secretary of State shall certify applicant candidates complying with the requirements as a certified candidate as soon as possible and no later than **ten (10) days** after final submittal of qualifying contributions. During the certification process, the Secretary of State's Bureau of Elections will determine whether applicant candidates provided the adequate number of qualifying contributions by assuring they were collected from eligible voters. Any qualifying contribution determined to have been collected from an ineligible voter will not count toward the minimum requirement.

We understand that applicant candidates are anxious to assure they met the minimum requirement of qualifying contributions, just as we know you understand the arduous process and difficulty of verifying the qualifying contributions. We will do our best to post information regarding the number of qualifying contributions on our website on a daily basis during the ten (10) day process.

The applicant candidate will receive a confirmation letter from the Secretary of State's Office, Bureau of Elections, stating that he or she has or has not qualified for public finance funds. We will also post the information on the website.

A certified candidate shall comply with all requirements of the VAA after certification and throughout the Primary and General election cycles and will make expenditures compliant with the Campaign Reporting Act.

A certified candidate who accepts public campaign funds for the primary election shall comply with all the requirements of the VAA for the remainder of the election cycle in question, even if he or she decides not to accept such funds for the general election. The specifically means that a certified candidate who does not accept public financing for the general election cannot raise money as if they were a privately financed candidate and cannot spend more on their campaign than they would have been distributed from the Fund.

Appellate Judicial Candidates

On November 1, 2015 amendments to Rules 21-402 and 21-404 NMRA (Canon 4, New Mexico Code of Judicial Conduct) will take effect. Among the amendments, it is made clear that judicial applicant candidates may not personally solicit or accept seed money and qualifying contributions collected for the purpose of obtaining public financing.

Accordingly, this office has changed the Qualifying Contribution receipt to reflect “Qualifying Contribution Collector” instead of “candidate” at the bottom of the form. Instead of having the candidate sign the receipt, placing them at risk of violating the Code of Judicial Conduct, the individual collecting the qualifying contribution will sign the receipt. While not subject to the Judicial Code of Conduct, applicant candidates for PRC offices will utilize the same receipt.

At the time of application to be certified under the Act, the candidate will turn in the required Qualifying Contribution Report with a cover sheet attached. The Candidate Acknowledgement will act as an acknowledgement for the candidate to sign that the qualifying contributions were collected in a manner compliant with the Voter Action Act. Again, PRC applicant candidates will utilize this form as well.

Restrictions for contributions to and expenditures of certified candidates:

1. All money distributed to a certified candidate shall be used for that candidate’s campaign related purposes in the election cycle in which the money was distributed;
2. A certified candidate must return any unspent or unencumbered public funds if they withdraw candidacy before the election for which the funds were distributed;
3. A certified candidate shall limit their total campaign expenditures and debts to the amount of money distributed from the fund;
4. Within thirty days after the Primary election, a certified candidate shall return to the Secretary any amount that is unspent or unencumbered by the date of the Primary election for deposit into the Fund;
5. Within thirty days after the General election, a certified candidate shall return to the Secretary any amount that is unspent or unencumbered by the date of the General election for deposit into the fund;
6. A certified candidate **shall not** accept contributions or loans from any other source except the certified candidate’s political party, as described below.

Political party contributions to certified candidates:

1. Certified candidates may accept monetary or in-kind contributions from a political party; provided that the aggregate amount of such contributions from all political party committees combined does not exceed the equivalent of ten percent of the value of that candidate's aggregate public financing per election cycle. Distribution amount x 10% = maximum contribution amount from political parties on one certified candidate.
2. All in-kind contributions from a political party distributed to certified candidates shall be used for campaign-related purposes as defined by NMSA 1978 § 1-19-29.1.
3. Nothing in this section shall prevent political party funds from being used for general operating expenses of the party; conventions; nominating and endorsing candidates; identifying, researching and developing the party's position on issues; party platform activities; non candidate-specific voter registration; non candidate-specific get-out-the-vote drives; travel expenses for non-candidate party leaders and staff; and other non-candidate-specific party building activities.

What campaign reporting requirements does the applicant candidate have under the Act?

1. Applicant candidates shall file a report listing seed money contributions and expenditures along with their application for certification. The report must already be submitted into CFIS at the time of filing their Declaration of Intent.
2. Certified candidates shall report expenditures according to the campaign reporting requirements specified in the Campaign Reporting Act.

A copy of the 2016 Candidate and Campaign Committee Campaign Reporting Schedule has been included on the website.

3. A person or political committee that makes expenditures to influence a race involving a certified candidate shall report to the Secretary of State the amount that person or political committee has spent. These reports shall include all previously unreported transactions through 5:00 p.m. two days before the report is due, and shall be submitted as follows;
 - a) For the primary election, by 5:00 p.m. on the second Monday in May, by 5:00 p.m. on the eleventh day before the election, and by 5:00 p.m. on the Thursday before the election; and

- b) For the general election, by 5:00 p.m. the first Tuesday in October, by 5:00 p.m. on the eleventh day before the election, and by 5:00 p.m. on the Thursday before the election.

What are matching funds?

Section 1-19A-14 within the Act provides for certified candidates to receive matching funds. However, in 2012 the matching funds provision was found unconstitutional by the United States District Court. The court found that providing matching funds to publicly financed candidates violated the free speech rights of non-publicly financed candidates and their supporters without serving a compelling state interest. **Therefore, matching funds will not be issued to certified candidates during the 2016 Election Cycle.**

Additionally, non-certified candidates will not be required to file an additional campaign report 10 days prior to Election Day.

What are the penalties for a violation of the Act?

In addition to other penalties that may be applicable, a person who violates a provision of the Voter Action Act [1-19A-1 NMSA 1978] is subject to a civil penalty of up to ten thousand dollars (\$10,000) per violation. In addition to a fine, a certified candidate found in violation of that act may be required to return to the fund all amounts distributed to the candidate from the fund. If the Secretary of State makes a determination that a violation of that act has occurred, the Secretary of State shall impose a fine or transmit the funding to the attorney general for prosecution. In determining whether a certified candidate is in violation of the expenditure limits of the act, the Secretary of State may consider as a mitigating factor any circumstances out of the candidate's control.

A person who willfully or knowingly violates the provisions of the Voter Action Act or rules of the Secretary of State or knowingly makes a false statement in a report required by that act is guilty of a fourth degree felony and, if he is a certified candidate, shall return to the fund all money distributed to that candidate.

2016 VOTER ACTION ACT FILING DAY CHECKLIST

The following forms are required for certification under the Voter Action pursuant to NMSA 1978 § 1-19-A (6).

1. Declaration of Intent
2. Application for Certification
3. Seed Money Report
4. Qualifying Contributions / Receipts
5. Qualifying Contribution Report
6. Candidate Acknowledgement
7. W9 Form

Please note: In addition to the Voter Action Act forms above you must also submit the following forms on filing day pursuant to § 1-8-26 NMSA 1978 to be certified as a candidate and placed on the 2016 primary election ballot.

1. Nominating Petitions
2. Candidate Information for Campaign Reporting
3. Declaration of Candidacy
4. Required proof of education (PRC)

Important: Pursuant to § 1-19-A-6 NMSA 1978 you must be certified as a candidate in order to qualify for public financing.