



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Miadich, Commissioners Baker, Cardenas, Wilson, and Wood

From: Dave Bainbridge General Counsel
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Subject: Lobbyist, Lobbying Firm, and Lobbyist Employer Recordkeeping, Proposed Amended Regulations 18610, 18612, and 18615

Date: August 9, 2021

Requested Action and Summary of Proposed Action

Staff submits draft amendments to Regulations 18610, 18612, and 18615 for pre-notice discussion. Regulations 18610, 18612, and 18615 concern the recordkeeping requirements for lobbyists, lobbying entities, and lobbyist employers. The proposed amendments include the addition of specific records that lobbyists, lobbying firms, and lobbyist employers must maintain, as well as other amendments clarifying the application of existing subdivisions, and other minor changes to the existing regulation as discussed below.

The final versions of the amended regulations are not up for consideration at this meeting. The proposed language for the amended regulations included with this memo is intended to facilitate discussion, and to allow the Commission to provide guidance and instruction to staff prior to presenting the amended regulations for approval at a subsequent Commission meeting. The amended regulations will be presented to the Commission for adoption on or after October 21, 2021, the scheduled date of the Commission's October meeting.

Background/Overview

One of the primary purposes of the Act is to ensure that activities of lobbyists are regulated, and their finances disclosed in order that improper influences will not be directed at public officials. (Section 81002). In furtherance of this purpose, the Act requires lobbyists, lobbying firms, lobbyist employers and persons who spend \$5,000 or more in a calendar quarter to influence legislative or administrative action ("\$5,000 filers") to file quarterly reports of their lobbying expenditures with the Secretary of State. The reports must include the lobbying firm or lobbyist employer's identity, payments made to lobbying firms and in-house lobbyists, as well as the specific lobbying interests of the lobbyist employer. The Act imposes specific reporting and accounting requirements, including requirements to maintain records for all receipts and payments for lobbying activity. The disclosure of activity expenses, defined in Section 86111, is important in tracking the attempt to influence legislative or administrative action.

Lobbyists, lobbying firms, lobbyist employers, and \$5,000 filers are required to disclose activity expenses. An activity expense is any payment that benefits a state agency official or

member of an agency official's immediate family, made by a lobbyist, lobbying firm, lobbyist employer or \$5,000 filer. A common form of activity expenses are gifts, such as meals and entertainment. Activity expenses do not include campaign contributions.

This agenda item involves amendments to the recordkeeping requirements for lobbyists, lobbying firms, lobbyist employers and persons who spend \$5,000 or more in a calendar quarter to influence legislative or administrative action.

Audit Process

The Political Reform Act requires the Franchise Tax Board (FTB) to conduct mandatory audits of lobbying firms and lobbyist employers. A special unit of the FTB is supposed to conduct these mandatory audits, and the findings, known as audit reports, are supposed to be sent to the FPPC. (Section 90000). The FTB is required to perform the audits on a biennial basis and the audits cover reports filed during a period of two years. A public draw is held in February of each odd-numbered year to randomly select 25% of the lobbying firms and 25% of the lobbyist employers.¹ When a lobbying firm or lobbyist employer is selected for audit, the individual lobbyist(s) employed by that organization is also subject to audit. As long as a lobbying firm or employer keep a separate record of all receipts and payments for lobbying activity, no additional records are required for the audit. Both the FTB and the FPPC may also conduct discretionary audits. The conduct of effective audits requires that detailed records be made available to auditors, so that all reported receipts and expenditures may be verified, and that any activity which was not properly reported may be identified by the review of the records of receipts and expenditures provided.

Section 86110 of the Act requires lobbyists, lobbying firms, and lobbyist employers which receive payments, make payments or incur expenses or expect to receive payments, make payments or incur expenses in connection with reportable activities to keep detailed accounts, records, bills, and receipts as required by regulations adopted by the Commission. The preparation of the quarterly reports required by the Act of lobbyists, lobbying firms, and lobbyist employers, as well as any subsequent audits of these filers, necessarily requires the maintenance of detailed accounts, records, bills, and receipts.

Current Regulations

This proposal amends Regulations 18610, 18612, and 18615. These regulations concern accounting and recordkeeping requirements for lobbyists, lobbying firms, lobbyist employers and persons who spend \$5,000 or more in a calendar quarter to influence legislative or administrative action.

Regulation 18610

¹ FTB has not conducted these audits in recent years. The FPPC last received lobbying audit reports in 2017, for the 2015-2016 audit period. For the 2017-2018 audit period, 119 lobbying firms and 192 lobbyist employers were selected for audits. For the 2019-2020 audit period, 118 lobbying firms and 189 lobbyist employers were selected for audits.

Regulation 18610 concerns lobbyist accounting. Subdivision (a) requires that a lobbyist maintain a journal or other form of record showing all activity expenses incurred or paid by the lobbyist and all monetary and non-monetary contributions of \$25 or more made or delivered by the lobbyist to state candidates or elected state officers, or made to committees controlled by or primarily formed to support such candidates or officers.

Subdivision (b)(1)-(6) outlines records that must be maintained to document activity expenses which must be reported by the lobbyist. These include original source documents, such as receipts, invoices and cancelled checks, indicating for each expenditure: (1) The full name of the payee; (2) The full name and official position of each elective state official, legislative official, agency official, state candidate or member of the immediate family of one of these individuals who was a beneficiary; (3) The total number of all beneficiaries; (4) A description of the goods or services or other consideration for which the expenditure was made or incurred; (5) The date and total amount of the transaction; and (6) The amount of the expenditure attributable to each beneficiary. In the event it is impractical to obtain a receipt or an invoice to support any expenditure, a written voucher shall be prepared to support such expenditure.

Subdivision (c) outlines the recordkeeping requirements for all monetary contributions of \$25 or more made to state candidates or elected state officers, or made to committees controlled by or primarily formed to support such candidates or officers.

Subdivision (d) states that these records must be maintained for 5 years from the date of the lobbyist's final report for the calendar year for which the activities were reported.

Regulation 18612

Regulation 18612 concerns accounting by lobbying firms. Subdivision (a) requires that a lobbying firm maintain a cash receipts journal showing a record of all a record of all payments received in connection with lobbying activity, and specifies the details required in these records.

Subdivision (b) requires a lobbying firm to maintain a cash disbursements journal or other form of record showing activity expenses incurred or paid by the lobbying firm that includes all monetary and non-monetary contributions of \$25 or more made by the lobbying firm to state candidates, elected state officers and committees controlled by or primarily formed to support such candidates or officers; and payments to any other lobbying firm with which the lobbying firm subcontracts.

Subdivision (c) outlines the recordkeeping requirements and original source documents that must be maintained in support of all reportable activity expenses.

Subdivision (d) outlines the recordkeeping requirements for all monetary contributions of \$25 or more made to state candidates or elected state officers, or made to committees controlled by or primarily formed to support such candidates or officers.

Subdivision (e) outlines the recordkeeping requirements that apply where a lobbying firm subcontracts with another lobbying firm for lobbying services.

Subdivision (f) states that these records must be maintained for 5 years from the date of the lobbyist's final report for the calendar year for which the activities were reported.

Regulation 18615

Regulation 18615 concerns accounting by lobbyist employers and persons spending \$5,000 or more to influence legislative or administrative action. Subdivision (a) requires lobbyist employers to keep detailed records of payments to lobbying firms and lobbyists, activity expenses, contributions to elected state officers, state candidates and committees controlled by or primarily formed to support such officers or candidates, and other payments to influence legislative or administrative action.

These other payments to influence include payments for or in connection with: support or assistance of lobbyists; direct communication with a legislative, agency or elective state official for the primary purpose of influencing legislative or administrative action; and soliciting or urging persons other than the lobbyist employer's employees to enter into direct communication with a legislative, agency or elective state official for the primary purpose of influencing legislative or administrative action.

Subdivision (b) specifies acceptable accounting methods.

Subdivision (c) specifies the types of record that must be maintained in support of all payments by the lobbyist employer.

Subdivision (d) states that these records must be maintained for 5 years from the date of the lobbyist's final report for the calendar year for which the activities were reported.

Proposed Changes

The proposed revisions to Regulations 18610, 18612, and 18615 seek to further clarify and make specific the recordkeeping requirements for lobbyists, lobbying entities, and lobbyist employers. We address each of staff's proposals in turn.

Regulation 18610. Lobbyist Accounting.

- Proposed amended subdivision (c) specifically identifies the types of source documents that must be maintained by a lobbyist in support of any activity expense, by adding legible images of cancelled checks, credit card statements and credit card receipts, contracts, agreements, correspondence and communications, journal or other records showing payments made or incurred, invitations to lobbyist sponsored events, and rosters of attendees, to the existing list of records.

The existing regulation includes some specific types of records that must be maintained. Staff has determined that the additional records and documents included in the amended language are necessary for a thorough and effective audit and verification of accurate reporting.

Also, staff notes that under current banking practices, cancelled checks are no longer returned to account holders, but scanned images of those cancelled checks are now readily available to account holders through on-line banking.

- Proposed amended subdivision (d) specifies that a written voucher or annotated receipt or invoice, which includes the full name and official position of each elective state official, legislative official, agency official, state candidate or member of the immediate family of one of these individuals who was a beneficiary; the total number of all beneficiaries; and the amount of the expenditure attributable to each beneficiary must be prepared to support any expenditure in the event a source document cannot be obtained. This replaces the broader standard, formerly in subdivision (b), which allowed for a written voucher to be prepared when it was “impractical” to obtain a receipt or invoice.

The existing regulation states that a written voucher may be prepared in the event it is impractical to obtain a receipt or an invoice. Staff notes that current technology easily allows for vendors to print receipts or invoices, even for transactions that have occurred in the past. Such documents are routinely obtained in Enforcement cases where the documentation is otherwise unavailable. Staff believes that this exception is only necessary in circumstances where such documentation cannot be obtained.

Regulation 18612. Accounting by Lobbying Firms.

- Proposed amended subdivision (d) specifically identifies the types of source documents that must be maintained by a lobbying firm in support of any activity expense, by adding legible images of cancelled checks, credit card statements and credit card receipts, contracts, agreements, correspondence and communications, journal or other records showing payments made or incurred, invitations to lobbyist sponsored events, and rosters of attendees, to the existing list of records.

Staff has determined that the additional records and documents included in the amended language are necessary for a thorough and effective audit. This language mirrors that proposed for inclusion in the corresponding 18610 subdivision (c) for records to be maintained by a lobbyist, noted above.

- Proposed amended subdivision (e) specifies that a written voucher or annotated receipt or invoice, which includes the full name and official position of each elective state official, legislative official, agency official, state candidate or member of the immediate family of one of these individuals who was a beneficiary; the total number of all beneficiaries; and the amount of the expenditure attributable to each beneficiary must be prepared to support any expenditure in the event a source document cannot be obtained. This replaces the broader standard, formerly in subdivision (c), which allowed for a written voucher to be prepared when it was “impractical” to obtain a receipt or invoice.

As noted above, staff believes that this exception is now outdated and unnecessary given current electronic bookkeeping and accounting practices.

- Proposed amended subdivision (g) adds the requirement that a lobbying firm maintain all contracts, agreements, correspondence and communications, journal or other records showing payments made or incurred when it subcontracts with another lobbying firm for lobbying services.

These documents are necessary to verify that all reportable activity concerning payments to another firm are properly disclosed.

Regulation 18615. Accounting by Lobbyist Employers and Persons Spending \$5,000 or More to Influence Legislative or Administrative Action.

- Proposed amended subdivision (c) replaces the terms “canceled checks or other bank records” with “original source documents.”

The use of the term “original source documents” is consistent with the recordkeeping requirements of 18610 and 18612, and allows for a more detailed description of the specific documents requires, as explained in subdivision (d) below.

- Proposed amended subdivision (c)(5) adds the requirement that a legible images of canceled checks may be maintained in place of the canceled check itself.

Under current banking practices, cancelled checks are no longer returned to account holders, but scanned images of those cancelled checks are now readily available to account holders through on-line banking.

- Proposed amended subdivision (d) specifically identifies the types of source documents that must be maintained by a lobbyist employer in support of any activity expense, which include receipts, invoices, cancelled checks or legible images of cancelled checks, credit card statements and credit card receipts, contracts, agreements, correspondence and communications, journal or other records showing payments made or incurred, invitations to lobbyist sponsored events, and rosters of attendees.

Staff has determined that the additional records and documents included in the amended language are necessary for a thorough and effective audit.

Summary

The proposed amendments would clarify and make specific the recordkeeping requirements for lobbyists, lobbying firms, and lobbyist employers to improve the accuracy of reporting and in order to facilitate the conduct of more effective audits.

Attachments:

Proposed Regulation 18610
Proposed Regulation 18612
Proposed Regulation 18615