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To: Chair Miadich, Commissioners Baker, Gómez, Wilson, and Wood

From: Dave Bainbridge, General Counsel, Legal Division
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Subject: Prenotice Discussion of Proposed Amendments to: Regulations 18624 & 18625; and Adoption of Regulation 18626

Date: September 15, 2022

Executive Summary

Staff submits draft language for prenotice discussion regarding amendments to Regulations 18624 and 18625 as well as for proposed Regulation 18626. Current Regulation 18624 defines when a lobbyist "arranges" for the making of a gift within the meaning of Section 86203. The proposed amendments would clarify that when a lobbyist solely makes recommendations and provides information to the lobbyist's employer in connection with a gift to a public official, the lobbyist does *not* "arrange" for the making of a gift under Section 86203 as determined by the Commission in a 1982 opinion.

Current Regulation 18625 concerns when a lobbyist or lobbying firm places an official under personal obligation within the meaning of Section 86205(a) and the proposed amendments would clarify the application of that statute to situations where a lobbyist or lobbying firm fails to make sufficient efforts to collect debt from an official.

Lastly, proposed Regulation 18626 concerns the contingency fee prohibition under Section 86205(f). The proposed regulation would define the statutory phrase "any payment in any way contingent" and provide that a contract for lobbying services does not, in itself, violate the contingency fee prohibition if it contains the expressly agreed upon terms of compensation and there is no discretion to make the compensation dependent to any degree on a specific outcome of the legislative or administrative action.

The final versions of the proposed regulations are not up for consideration at this meeting. The proposed language for these regulations is intended to facilitate discussion, and to allow the Commission to provide guidance and instruction to staff prior to presenting the regulations for approval at a subsequent Commission meeting. These regulations will be presented to the Commission for adoption on or after November 17, 2022, the scheduled date of the Commission's November meeting.

Reason for Proposed Regulatory Action

The Commission is charged with adopting rules and regulations to carry out the purposes and provisions of the Act (Section 83112), including the express purpose of regulating the activities of lobbyists so that improper influences are not directed at public officials (Section 81002). The prohibitions pertaining to lobbyists and lobbying firms in Sections 86203 and 86205 have been provisions in the Act, without substantive change, from the time the Act was adopted as an initiative by California voters in 1974. Despite their importance, there have been few regulations adopted to implement and interpret these provisions.

Over the years, the Commission's Enforcement Division has applied these sections by reading the plain language of the prohibitions without clarification as to their application. For example, while the term "any payment in any way contingent" in Section 86205(f) suggests that the prohibition is broad, the Enforcement Division has never had the benefit of a definition for that term to confirm all of the different types of payments, such as bonusses or performance compensation, that are potentially included within the prohibition. Having regulations that provide more detailed examples of what those terms mean would help the Enforcement Division and the regulated community have a mutual understanding of these provisions.

Therefore, staff proposes amendments to Regulations 18624 and 18625, and adoption of Regulation 18626, to further clarify the meaning and scope of the prohibitions pertaining to lobbyists and lobbying firms in Sections 86203 and 86205. These recommended improvements will provide additional guidance concerning the specified provisions and facilitate compliance with, and enforcement of, the Act.

Background

The laws regulating California state lobbyists are found in Sections 86100 through 86300 of the Act,[1] which was adopted by the voters as Proposition 9 in June 1974. As mentioned, the express purpose of regulating lobbyists is that "[t]he activities of lobbyists should be regulated and their finances disclosed in order that improper influences will not be directed at public officials." (Section 81002(b).)

Relevant to the proposed regulatory changes, Sections 86201 through 86206 address prohibitions applicable to lobbyists and lobbying firms. "Gift" is defined in Section 86201 for purposes of the prohibition in Section 86203, which makes it unlawful for a lobbyist or lobbying firm to make a gift of more than $10 in a calendar month, *or arranging* to make a gift, to "any state candidate, elected state officer, or legislative official, or to an agency official of any agency" the lobbyist or lobbying firm is registered to lobby. (Sections 86201 & 86203.) In addition, a lobbyist or lobbying firm is prohibited from placing officials under personal obligation and accepting any payment contingent upon a specific outcome of any legislative or administrative action. (Section 86205(a) & (f).)

[1] The Act's regulations on lobbying are located in Regulation 18109 through 18997.

Regulation 18624 implements the provisions of Section 86203. In a 1982 opinion, the Commission considered several factual scenarios, most involving a lobbyist making recommendations and providing information to the lobbyist's employer concerning gifts (luncheon/dinner) to public officials, to determine whether the hypothetical activities fell within the criteria the Commission established for when a lobbyist arranges the making of a gift by another. The opinion concluded those activities did not fall within the established criteria. In 1985, the Commission adopted Regulation 18624 and changed the criteria set forth in the 1982 opinion by defining when a lobbyist arranges for the making of a gift to include six specific activities that all involve communication by a lobbyist with the recipient of the gift. The proposed amendments to Regulation 18624 would simply clarify the hypothetical activities that the opinion concluded did not constitute a lobbyist arranging for the making of a gift under the opinion's criteria would likewise not fall within the current definition set forth in Regulation 18624.

Section 86205(a) prohibits a lobbyist or lobbying firm from placing officials under personal obligation which, under current Regulation 18265, includes providing loans to state or legislative officials. The prohibition helps to avoid the perception that through such activity, the official actions of state or legislative officials can be controlled. In a prior Enforcement matter, a lobbyist was alleged to have violated Section 86205(a) after he provided consulting services to candidates for the State Legislature who failed to pay the full contractually agreed upon amount. The lobbyist, who was registered to lobby the Legislature, was alleged to have placed the officials under personal obligation by not sufficiently attempting to collect the money owed after they were successfully elected. The respondent in the matter ultimately acknowledged that his conduct violated the prohibition. The proposed amendments to Regulation 18625 would clarify the application of Section 86205(a) to debt owed by an official to a lobbyist or lobbying firm.

Lastly, Section 86205(f) prohibits a lobbyist or lobbying firm from accepting or agreeing to accept "any payment in any way contingent" on a specific outcome of any legislative or administrative action.[2] While there has never been a regulation interpreting this provision, the proposed regulation would provide a definition for the quoted phrase to clarify the broad application of the statutory prohibition. In addition, Section 86205(f) applies to a lobbying contract itself in that it prohibits a lobbyist or firm from *agreeing* to accept contingency fees in return for their lobbying services. Therefore, the proposed regulation would provide that a contract for lobbying services does not, in itself, violate the contingency fee prohibition if it contains the expressly agreed upon terms of compensation to be accepted and provides no discretion to make the agreed upon compensation dependent to any degree on a specific outcome of the legislative or administrative action.

[2] The United States Supreme Court has stated the rationale for prohibiting contingency fees is that such a fee arrangement may tempt lobbyists to exert undue influence over public officials, who should be acting on the merits of an issue in the public's interest. (See e.g., See *Hazelton v. Sheckels*, 202 U.S. 71, 79 (1906) [finding that a contingency fee lobbying contract tends to invite the possibility of improper solicitation from the moment of its inception and must be struck down regardless of the intention underlying the agreement].)

Proposed Regulations

Regulation 18624 Lobbyist Arranging Gifts

Section 86203 prohibits a lobbyist or lobbying firm from making or arranging for the making of gifts totaling more than $10 in a calendar month to any state candidate, elected state officer, legislative official, or agency official.

In a 1982 opinion, the Commission considered various factual situations involving lobbyists and gifts to public officials – specifically, a dinner or luncheon that would be hosted and paid for by the lobbyist's employer – to clarify when a lobbyist arranges for the making of a gift by another person, and therefore in violation of Section 86203. (*In re Institute for Governmental Advocates* ("*IGA*") (1982) 7 FPPC Ops. 1.)[3] The hypotheticals mainly concerned whether a lobbyist could make recommendations or provide information to the lobbyist's employer, including information obtained from a third party for that purpose, under the gift restriction.[4]

The opinion established a definition for when a lobbyist "arranges for the making of a gift" by another, concluding it occurs when the lobbyist 1) "[t]akes any action involving contact with a third party which facilitates the making of a gift" or 2) [h]as any contact with the public official who is to be the recipient of the gift which facilitates the making of the gift." (*In re IGA*, *supra* at p. 2.)

Applying that definition, the opinion concluded that a lobbyist making recommendations or providing information to the lobbyist's employer, including information obtained from a third party for that purpose, would not be arranging for the making of a gift as prohibited under Section 86203. That conclusion was based, in part, on caselaw holding that the communication between a lobbyist and the lobbyist's employer is protected speech under both the federal and state constitutions. (*Ibid.*, at p. 2 citing *Institute of Governmental Advocates v. Younger* (1977) 70 Cal.App.3d 878.)[5] The opinion notes, however, that certain activities go beyond making recommendations or providing information to the lobbyist's employer concerning a gift to a public official. For example, while a lobbyist may provide the lobbyist's employer with the

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[3] According to the opinion, "[t]he limitations imposed by Section 86203, on a lobbyist giving gifts, or on his or her acting as an agent in, or arranging for, the giving of gifts by another are designed to prevent a lobbyist from currying favor with public officials through such activities. The drafters of the Act believed that the recipients of gifts from lobbyists might become more receptive to the arguments of such lobbyists and not consider them purely on their merits." (*In re IGA*, *supra* at p. 2.)

[4] For example, the requestor asked whether a lobbyist may recommend to his or her employer that the employer host and pay for a dinner or luncheon; whether a lobbyist may provide the employer with the names and addresses of public officials so the employer could send them invitations; and whether a lobbyist could communicate with restaurants for the sole purpose of obtaining information for the employer as to available dates and costs to be incurred for food and beverages. (*In re IGA*, *supra*, at p. 1.)

[5] That case concerned Section 86202 which deals with the making of contributions as opposed to gifts, and states that "[i]t shall be unlawful for a lobbyist to make a contribution, or to act as an agent or intermediary in the making of any contribution, or to arrange for the making of any contribution by himself or any other person."

names and addresses of public officials for the purpose of enabling the employer to send them invitations, the lobbyist may not contact the officials, or their agents and employees, for the information. In addition, while a lobbyist may communicate with a restaurant about such things as available dates and potential costs, the lobbyist may not make a reservation.[6]

Finally, the opinion finds that so long as Section 86203 has not been violated, such as where the lobbyist has simply made a recommendation to the employer, then the lobbyist may attend the relevant luncheon or dinner without violating the Act. In that situation, however, the lobbyist's employer must also attend – otherwise, the lobbyist would facilitate the making of the employer's gift by attending in violation of Section 86203.

In 1985, subsequent to the *In re IGA* opinion, the Commission adopted Regulation 18624 to change the definition of "arranging for the making of a gift," set forth in *In re IGA*, by defining what constitutes "arranging" a gift to specific activities that all involve communication between the lobbyist and gift recipient.[7]

While Regulation 18624 changed the definition used in the *In re IGA* opinion as to when a lobbyist arranges for the making of a gift, the new definition does not change the opinion's conclusion that the gift restriction is not violated when a lobbyist is merely making recommendations or providing information to the lobbyist's employer, including information obtained from a third party for that purpose. Therefore, the proposed amendments to Regulation 18624 would clarify that under the current definition in Regulation 18624, a lobbyist does not arrange for the making of a gift to another by making recommendations or providing information to the lobbyist's employer concerning a gift to a public official:

> A lobbyist does not "arrange for the making of a gift" if the lobbyist, either directly or through an agent, solely makes recommendations or provides information to the lobbyist's employer, including information obtained from a third party for that purpose, concerning gifts to a public official.

(Proposed Regulation 18624, subdivision (b).)

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[6] Merely gathering information does not constitute a specific act which "facilitates the making of a gift." (*In re IGA*, *supra*, at p. 3.)

[7] The adoption memorandum explains the changes to the *In re IGA* opinion's definition were being recommended for three reasons: 1) it was too restrictive (and difficult to enforce) in that it prohibits contact with a third party (e.g., lobbyist makes luncheon reservation at a restaurant for the lobbyist's employer and lunch recipient); 2) it was unreasonable in that, for example, if a legislator approached a lobbyist to have the lobbyist relay acceptance of a lunch invitation to the lobbyist's employer, the lobbyist who did not initiate the contact was forced to choose between violating the law or refusing the request; and 3) it was unreasonable that a lobbyist could not accompany an official to an event where transportation is provided by the lobbyist's employer who is the donor and will be present at the event. (See Memorandum, Proposed Lobbyist Gift Regulations – 18624, dated October 25, 1985.)

Regulation 18625 Placing Official Under Personal Obligation

As mentioned, a central purpose of the Act is the regulation of lobbyists and disclosure of lobbyists' finances so that improper influences will not be directed at public officials. (Section 81002, subd. (b).) To that end, Section 86205(a) provides, in full, that:

> No lobbyist or lobbying firm shall:
>
> (a) Do anything with the purpose of placing any elected state officer, legislative official, agency official, or state candidate under personal obligation to the lobbyist, the lobbying firm, or the lobbyist's or the firm's employer.

The Act does not define the phrase "placing … under personal obligation" as it applies to lobbyists and lobbying firms. However, current Regulation 18625 clarifies the application of Section 86205, subdivision (a), to include a prohibition against lobbyists and lobbying firms from "arranging or making a loan whether secured or unsecured, to [an] elected state officer, legislative official, agency official or state candidate, either directly or through an agent." (Regulation 18624(a).)

In the 1989 Memorandum proposing adoption of Regulation 18625, staff stated it was evident from the Act's express purpose of prohibiting lobbyists from improperly influencing public officials (Section 81002, subd. (b)), coupled with the lobbyist prohibitions set forth in Sections 86203 through 86205, that the drafters of the Act "were attempting to avoid the perception that lobbyists or lobbying firms, by means of gifts or otherwise, can control the actions of elected state officers." (FPPC Memorandum (1989), Adopt Regulation 18625, p. 2.) Therefore, Regulation 18625 was ultimately adopted because allowing lobbyists to provide loans to state or legislative officials would foster that perception due to the personal obligation created by the arrangement.

The proposed amendments to Regulation 18625 would similarly clarify the application of Section 86205, subdivision (a), to include a prohibition against lobbyists and lobbying firms from failing to make sufficient efforts to collect debt owed for services provided to state or legislative officials they are registered to lobby. Similar to lobbyists providing loans to such officials, allowing debt owed to go uncollected creates the same perception of control over officials the Act seeks to prevent due to the personal obligation that arises from the arrangement.

The proposed regulation is informed by a prior Enforcement matter in which the respondent was a lobbyist who also operated a political consulting business that provided campaign consulting services to candidates for state and local offices. The respondent had lobbied the State Legislature, Governor's Office, and State agencies on behalf of a variety of clients for several years while also providing campaign consulting services to candidates for the State Legislature. On occasion, the respondent's two businesses resulted in him lobbying, on behalf of clients of his lobbying practice, elected officials who had been clients of his political consulting business.

According to the facts in the negotiated stipulation:

> Respondent's contracts with legislative candidates typically called for compensation in the form of monthly payments over a set period of months. In many cases, the contract provided that most, or even all of the consulting fees, would only be owed to Respondent if the candidate won the election. These "win bonuses" ranged in amount from tens of thousands of dollars to over one hundred thousand dollars. A win bonus would typically be payable in equal monthly payments over a number of months beginning after the election. Generally, Respondent sent monthly invoices to the successful candidates whom owed him a win bonus. As discussed below, on two occasions, Respondent failed to send invoices and the elected officials failed to pay Respondent the full amount owed per the parties' contract. There were numerous other instances where Respondent did, however, continue to send bills on a monthly basis to state legislators with similar arrangements, and the vast majority of such clients paid Respondent in full.

The two separate counts in the matter alleged respondent violated Section 86205(a) "by contracting with candidates for the State Legislature to provide consulting services for which the candidates agreed to pay, resulting in debts owed to Respondent that Respondent did not sufficiently attempt to collect from those legislators who failed to pay him the full amount owed after getting elected."

The first count alleged the respondent entered a contract with an individual to provide consulting services for his campaign for State Assembly wherein the individual "agreed to pay a $125,000 win bonus in 20 equal monthly payments beginning in February of 2009" with a 10% penalty on any amount not paid when due. After his client won the election, the respondent sent him an invoice in both March and April of 2009, but no further invoices after that. After paying a total of $25,000 on the debt in the first half of 2009, the respondent's client made no subsequent payments on the debt, and the respondent neither sent additional invoices nor charged his client interest on the unpaid debt.

The second count alleged the respondent entered a contract with another individual to provide consulting services for his State Assembly campaign in 2010. The individual agreed to pay a win bonus of $90,000 in ten equal monthly installments to begin in January of 2011 as well as a 10% charge for late payments.[8] After his client won the election, the respondent sent him multiple invoices, but the respondent's client did not make any payments in response to those invoices. After a May 2012 invoice, the respondent sent no further invoices even though his client still owed $60,000 under the contract.

[8] The client paid the respondent $30,000 before the election, leaving $60,000 due in ten monthly installments beginning on January 1, 2011.

In both instances, the respondent allowed these debts to go without collection efforts for more than four months providing an inference that his "purpose was to place the legislators under personal obligation to him for the debt."[9] The stipulation recognized that a "situation where a lobbyist holds the legal right to collect a significant debt from an official, or take no action on the debt, creates an obvious opportunity for improper influence by the lobbyist over the official."[10] Ultimately, the respondent in the above matter acknowledged that his conduct violated the Act and agreed to write off the debt owed to him by his clients.

As mentioned, the proposed amendments to Regulation 18625 would prohibit lobbyists and lobbying firms from failing to make sufficient efforts to collect debt owed to them from officials they are registered to lobby. Currently, subdivision (a) contains the prohibition against lobbyists and lobbying firms from placing state or legislative officials under personal obligation by arranging or making loans to them. The proposed amendments would add a prohibition against failing to make sufficient efforts to collect debt owed from state or legislative officials. (Proposed Regulation 18625(a)(2).) Current subdivision (b) clarifying how a lobbyist or lobbying firm "arranges" a loan for purposes of subdivision (a) would remain unchanged.

In the Enforcement matter above, the two contracts set forth that the win bonusses would be paid in a set number of "equal monthly installments" to begin on a specified date after the election. Both contracts included a provision to add a 10% charge for late payments. To collect, the respondent would generally send monthly invoices to the successful candidates who owed him a win bonus. In those two matters, however, while the respondent sent invoices to his clients during certain months, in other months he failed to send invoices and the clients failed to pay. In both instances, the respondent allowed the past due debts to go without collection efforts for more than four months. He also failed to charge the clients the 10% penalty for late payments as required under the contract. Therefore, proposed subdivision (c) would provide that a lobbyist or lobbying firm "fails to make sufficient efforts to collect debt" from state or legislative officials if the lobbyist or firm does not follow the "collection processes or procedures provided for in the contract" with the state or legislative official. (Proposed subdivision (c)(1).)

As mentioned, the respondent would generally send monthly invoices to the successful candidates who owed him a win bonus. Despite failing to send monthly invoices in the two matters above, there were numerous other instances where the respondent did continue to send invoices on a monthly basis to state legislators with similar arrangements, and the vast majority of such clients paid Respondent in full. Therefore, proposed subdivision (c) would provide that a lobbyist or lobbying firm "fails to make sufficient efforts to collect debt" from state or legislative officials if the lobbyist or firm does not "[f]ollow the collection processes or procedures employed by the lobbyist or lobbying firm during its regular course of business in similar circumstances." (Proposed subdivision (c)(2).)

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[9] The stipulation also noted that respondent had been the subject of a previous complaint in 2006 to the FPPC regarding a similar business arrangement, but the complaint was not opened for investigation at that time because the facts as presented were determined to constitute reasonable efforts to collect the debt – specifically, the respondent was in regular communication with his client about the outstanding debt.

[10] It was acknowledged, however, that there was no evidence suggesting such improper influence had occurred.

Under some circumstances, contracts may not have the "collection processes and procedures" contemplated by proposed subdivisions (c)(1) and (c)(2). In those situations, proposed subdivision (c) would provide that a lobbyist or lobbying firm "fails to make sufficient efforts to collect debt" from state or legislative officials if the lobbyist or firm does not "[a]ttempt in good faith and use best efforts to collect the past due debt."

Lastly, staff recognizes that despite efforts made to collect debt owed, there will be situations that arise where lobbyists or lobbying firms will have to resort to legal action to collect that debt when it is past due. Therefore, proposed subdivision (d) would create a safe harbor provision for these situations. Specifically, there would be no violation under proposed subdivision (c) if the lobbyist or lobbying firm pursues legal action, such as filing a civil complaint, to collect the past due debt within six months of the last day of the month in which the services are provided or the date of a candidate's election to office, for services related to the election with a payment contingent on the candidate being elected. (Proposed subdivision (d)(1)&(2).)

Regulation 18626 Contingency Fees Prohibition

Section 86205(f) prohibits a lobbyist or lobbying firm from accepting or agreeing to accept "any payment in any way contingent upon the defeat, enactment, or outcome of any proposed legislative or administrative action."[11] The phrasing of this sentence shows the intent of the electorate is that the prohibition be construed in a broad manner. To clarify the broad application of the prohibition, staff proposes a regulation that defines the phrase "any payment in any way contingent." The proposed regulation would also provide that a contract for lobbying services does not, in itself, violate the contingency fee prohibition if it contains the expressly agreed upon terms of compensation to be received while providing no discretion to make the agreed upon payment dependent to any degree on a specific outcome.

As mentioned, the plain language of the statute suggests an intent by the electorate that the prohibition be construed broadly. "When interpreting statutes, we begin with the plain, commonsense meaning of the language used by the Legislature. [Citation.] If the language is unambiguous, the plain meaning controls. [Citation.]" (*Voices of Wetlands v. State Water Resources Control Bd*. (2011) 52 Cal.4th 499, 519.)[12] In addition, "[w]hen attempting to ascertain the ordinary, usual meaning of a word, courts appropriately refer to the dictionary definition of that word." (*Wasatch Property Management v. Degrate* (2005) 35 Cal.4th 1111,

[11] As an example, a prior enforcement case alleging a Section 86205(f) violation involved a contract between the California State Bar and respondent lobbyist that agreed to pay the lobbyist a flat rate annually for two years as well as a $75,000 bonus if the lobbyist secured enactment of a multi-year funding bill for the State Bar. (FPPC No. 97/125.) This contractual arrangement was an obvious violation of Section 86205(f), and the matter resolved by way of a negotiated settlement with the respondent. The State Bar was charged with the same violation on the theory that it "purposefully or negligently" caused another person to violate the Act pursuant to Section 83116.5.

[12] Rules of statutory construction are applicable to both legislative enactments and statutory initiatives. (*People v. Bustamante* (1997) 57 Cal.App.4th 693, 699.)

1121–1122; *Hassan v. Mercy American River Hospital* (2003) 31 Cal.4th 709, 720 [interpreting statutory language in accordance with its usual and ordinary meaning].)

Webster's defines the term "any," in part, as "to any extent or degree: at all." (See https://www.merriam-webster.com/dictionary/any.) Moreover, the California Supreme Court stated that the term "any" means "without limit and no matter what kind." (*Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798.) "From the earliest days of statehood [the court has] interpreted 'any' to be broad, general and all embracing." (*California State Auto. Ass'n. Inter–Ins. Bureau v. Warwick* (1976) 17 Cal.3d 190, 195 citing *Davidson v. Dallas* (1857) 8 Cal. 227, 239 [the "word 'any' means every…"]; accord, *Department of California Highway Patrol v. Superior Court* (2008) 158 Cal.App.4th 726, 736 [use of "the word 'any' ... in a statute unambiguously reflects a legislative intent for that statute to have a broad application"].)

Here, the plain meaning of the phrase "any payment in any way contingent" as used in the Section 86205(f) is clear and unambiguous – the prohibition applies to all payments accepted, or to be accepted by lobbyists and lobbying firms that are dependent to any degree on a specific outcome of legislative or administrative action. The prohibition is intended to be all-encompassing with no exceptions. This broad application of the statute is consistent with the express purposes of the Act 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), and to liberally construe its provisions to accomplish its purposes (Section 81003).

Proposed subdivision (a) proposes to define the phrase "any payment in any way contingent:"

> For purposes of Section 86205, subdivision (f), the phrase "any payment in any way contingent" means every type of payment, including payment of a fee, salary, bonus, commission or any other form of compensation, which payment is dependent to any degree on the defeat, enactment, or outcome of any proposed legislative or administrative action.

The proposed definition would identify the more common types of potential payments[13] while clarifying that the prohibition applies to all payments, not only payments a lobbyist or lobbying firm has agreed to accept in a contract for lobbying services.[14]

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[13] Under Section 82044, "payment" is defined to mean a "payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible."

[14] As an example, year-end bonuses given to salaried lobbyists was the subject of an opinion from the Connecticut Office of State Ethics. (See OSE Advisory Opinion No. 1993-19.) Similar to California, Connecticut has a contingency fee prohibition that states no person "shall be employed as a lobbyist for compensation which is contingent upon the outcome of any administrative or legislative action." (Conn.Gen.Stat., § 1-97(b).) Based on the prohibition, the opinion concludes:

> Thus, bonuses given to communicator lobbyists based on the outcome of their lobbying activities (e.g., because a particular bill is passed or "killed"), whether given by a corporate employer, a lobbying firm employer or a lobbying client, are prohibited. If, however, a corporate

As mentioned, Section 86205(f) prohibits a lobbyist or lobbying firm from accepting or *agreeing* to accept any payment that is contingent on a specific outcome of legislative or administrative action. By its terms, Section 86205(f) applies to the lobbying contract itself in that it prohibits a lobbyist or firm from agreeing to accept contingency fees in return for their lobbying services. Therefore, proposed subdivision (b) would provide that contract for lobbying services does not, in itself, violate the contingency fee prohibition if it contains the expressly agreed upon terms of compensation to be received and provides no discretion to make the agreed upon payment dependent to any degree on a specific outcome of the legislative or administrative action.

Conclusion

The proposed amendments to Regulation 18624 codifying the general conclusions concerning the hypotheticals posed in the *In re IGA* opinion will serve to clarify that a lobbyist does *not* arrange for the making of a gift to another, under the current definition in Regulation 18624, by making recommendations or providing information to the lobbyist's employer, including information obtained from a third party, concerning a gift to a public official. In addition, the proposed amendments to Regulation 18625 will clarify the application of Section 86205(a) to lobbyists and lobbying firms who fail to make sufficient efforts to collect past due debt from public officials they are registered to lobby. Lastly, proposed Regulation 18626 is meant to clarify the broad application of Section 86205(f) by defining the phrase "any payment in any way contingent." These recommended improvements will provide additional guidance concerning the nature and scope of the specified provisions, and facilitate compliance with, and enforcement of, the Act.

employer or lobbying firm employer customarily gives its salaried employees a year-end bonus (such as a $100 gift certificate, or a standard bonus based on a percentage of each individual's total yearly salary), then a lobbyist/employee may also receive the bonus.