



October 18, 2021

VIA ELECTRONIC MAIL

Chair Miadich and Commissioners Baker, Cardenas, Wilson, and Wood
Fair Political Practices Commission
ATTN: Zachary W. Norton, Senior Commission Counsel, Legal Division
1102 Q Street, Suite 3000
Sacramento, CA 95811
E-Mail: ZNorton@fppc.ca.gov

RE: Comment on Updated Amendments to Lobbyist Recordkeeping Regulations

Dear Chair Miadich and Commissioners:

After submitting a comment on October 1, the Institute of Governmental Advocates (“IGA”) has reviewed the updated draft amendments to Regulations 18610, 18612, and 18615 that were distributed on October 6, 2021. Thank you for your consideration of our comments, in particular those related to the clarifying language now following “correspondence and communications” to reflect only those communications that substantiate the expense itself and don’t simply “concern” it.

However, we notice that none of the suggestions in Section IV of our previous comment seem to have been taken into consideration. To summarize, as currently written, each Regulation requires certain “source documents” be maintained by a lobbying entity to support lobbying expenditures and receipts, then lists six types of source documents, *all* of which appear to be required under the Regulations as written. There is no valid reason to require six types of source documents for each payment made, nor is any justification provided. We feel the six types of source documents listed should rather be *examples* of such “source documents” and should not *all* be required.

For example, if an expenditure is fully substantiated by a credit card receipt, a journal showing the payment was made gives an auditor the same information and is therefore not also necessary for the auditor to complete his or her work. Both should not be required in order for a lobbying entity to be in full compliance with its recordkeeping obligations.

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A common example plays out as follows. A lobbyist employer wants to invite each member of the Legislature to its annual industry event in Sacramento. The lobbyist employer reserves an event space, and in order to do so, emails its credit card information to the event space to hold the reservation date. A few days later, the lobbyist employer finalizes its contract with the event space. Upon each party signing the contract, the event space charges the lobbyist employer's credit card for the full amount of the event as outlined in the contract and provides the lobbyist employer with a receipt. The lobbyist employer later pays its credit card statement, which includes the charge for this event, with a check mailed to the credit card company. The lobbyist employer is now required to create a journal entry showing all of this activity. Each of these six items would be required to substantiate a single payment made by the lobbyist employer, when each single item, on its own, would achieve this purpose. We will now discuss each Regulation in turn.

I. Proposed Amendment of Regulation 18610 (Lobbyists)

Specifically, with respect to the proposed amendment to Regulation 18610 concerning lobbyist accounting, subdivision (c) now requires all of the following source documents to support each activity expense:

- (c) Source documents required to be maintained under subdivision (b) include:
- (1) Cancelled checks or legible images of cancelled checks, receipts and invoices;
 - (2) Credit card statements and credit card receipts;
 - (3) Contracts and agreements for goods or services;
 - (4) Correspondence and communications substantiating the activity expense;
 - (5) Journals or other records showing payments made or incurred; and
 - (6) Invitations to lobbyist sponsored events, and rosters of attendees to such events.

Requiring all six of these items (some of which contain multiple items within them, i.e., cancelled checks *and* receipts *and* invoices) is duplicative, especially when no valid justification is given for requiring them. We suggest making the six types of source documents listed in the subdivision *examples* of what would be sufficient documentation for an activity expense incurred or paid by a lobbyist (new language is underlined, and language to be removed is ~~stricken~~):

18610(c) Examples of source documents required to be maintained under subdivision (b) may include:

...

- (5) Journals or other records showing payments made or incurred, ~~and~~ or

Indeed, this list is also duplicative with subdivision (a) of the same Regulation, which already requires each lobbyist "...maintain a journal or other form of record showing all activity expenses incurred or paid by the lobbyist..." Requiring the six items listed in proposed

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subdivision (c) in addition to the requirements of (a) is simply not necessary for a productive and efficient audit.

II. Proposed Amendment of Regulation 18612 (Lobbying Firms)

With respect to the proposed amendment to Regulation 18612 concerning accounting by lobbying firms, both subdivisions (a) and (b) would require a “cash receipts journal” and “cash disbursements journal,” respectively, showing a record of all payments received and made in connection with lobbying activity. Each amended subdivision states as follows:

- (a) Pursuant to Government Code Section 86110, a lobbying firm shall maintain a cash receipts journal showing a record of all payments received in connection with lobbying activity...
- (b) A lobbying firm shall maintain a cash disbursements journal showing...

Government Code section 86110 makes no reference to a “journal” or any requirement to keep one; instead, it simply requires “detailed accounts, records, bills, and receipts” in order for a lobbying entity to meet its recordkeeping obligations, and does not require such records be kept in journal form. Furthermore, the current version of Regulation 18612(b) allows “a cash disbursements journal *or other form of record...*” thereby not requiring the records be kept in this manner (notably, Regulation 18610 uses the same language, but it has been removed from 18612). Therefore, we object to the requirement that a “journal” be kept in subdivisions (a) and (b); it’s an outdated term and many other methods exist to collect the required information.

Then, subdivision (c) states as follows:

- (c) A lobbying firm shall maintain source documents to substantiate information in a cash receipts journal or cash disbursements journal required by subdivisions (a) and (b), including:
 - (1) Cancelled checks or legible images of cancelled checks, receipts and invoices;
 - (2) Credit card statements and credit card receipts;
 - (3) Contracts and agreements;
 - (4) Correspondence and communications substantiating the receipt or disbursement;
 - (5) Journals or other records showing payments made or incurred; and
 - (6) Invitations to lobbying firm sponsored events, and rosters of attendees to such events.

Again, requiring all six of these items (some of which contain multiple items within them, i.e. cancelled checks *and* receipts *and* invoices), in addition to the journals required by subdivisions (a) and (b), is superfluous, especially when no valid justification is given for requiring them. This list is not only duplicative with subdivision (a) and (b) of the same Regulation, but is also duplicative within itself. We suggest again making the six types of source

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documents *examples* of what would be sufficient documentation for a payment made or received by a lobbying firm (new language is underlined, and language to be removed is ~~stricken~~).

18612(c) A lobbying firm shall maintain source documents to substantiate information in a cash receipts journal or cash disbursements journal required by subdivisions (a) and (b), ~~including~~ such as:

...

(5) Journals or other records showing payments made or incurred, ~~and~~ or

III. Proposed Amendment of Regulation 18615 (Lobbyist Employers)

With respect to the proposed amendment to Regulation 18615 concerning accounting by lobbyist employers and persons spending \$5,000 or more to influence legislative or administrative action, subdivision (a) currently requires lobbyist employers to keep “detailed records of payments” in five categories, and subdivision (b) currently allows records to be kept using one of the following methods:

- (1) The lobbyist employer may keep records of payments in connection with lobbying separate from records of activities which are not described in subdivision (a); or
- (2) The lobbyist employer may use any system with records maintained in accordance with accepted accounting principles.

Then, subdivision (d) *also* requires all of the following source documents to support each payment made by a lobbyist employer:

- (d) Source documents required to be maintained under subdivision (c) include:
- (1) Cancelled checks or legible images of cancelled checks, receipts and invoices;
 - (2) Credit card statements and credit card receipts;
 - (3) Contracts and agreements for goods or services;
 - (4) Correspondence and communications substantiating the activity expense;
 - (5) Journals or other records showing payments made or incurred; and
 - (6) Invitations to lobbyist employer sponsored events, and rosters of attendees to such events.

Requiring all six of these items (some of which contain multiple items within them, i.e., cancelled checks *and* receipts *and* invoices) is superfluous, especially when no valid justification is given for requiring them. This list is not again duplicative with subdivision (a) and (b) of the same Regulation, and is duplicative within itself. We suggest again making the six types of source documents *examples* of what would be sufficient documentation for a payment made by a lobbyist employer (new language is underlined, and language to be removed is ~~stricken~~):

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18615(d) Examples of source documents required to be maintained under subdivision (c) may include:

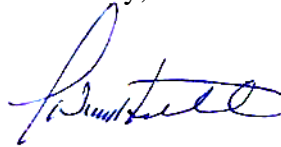
...

(5) Journals or other records showing payments made or incurred, ~~and~~ or

The Regulations as they currently exist already require lobbying entities to maintain a number of records, and those records have proven sufficient for auditors to conduct “thorough and effective” audits for many years. Given this, we wonder why these amendments are necessary in the first place, but given they are up for adoption by the Commission next month, we would like to reiterate our view that maintaining all of the requested source documents is not necessary for an auditor to perform a detailed lobbying audit.

Thank you for your consideration of this comment, and we look forward to further discussion with Commissioners and staff on this topic.

Sincerely,

A handwritten signature in blue ink, appearing to read 'T. Hiltachk', written in a cursive style.

Thomas W. Hiltachk

General Counsel

Institute of Governmental Advocates