



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, Zachary W. Norton, Senior Counsel

Subject: Lobbyist, Lobbying Firm, and Lobbyist Employer Recordkeeping, Proposed Amended Regulations 18610, 18612, and 18615

Date: November 8, 2021

Requested Action and Summary of Proposed Action

Staff submits amended Regulations 18610, 18612, and 18615 for adoption, and existing Regulation 18612 for repeal. Regulations 18610, 18612, and 18615 concern the recordkeeping requirements for lobbyists, lobbying firms, and lobbyist employers. The proposed amendments identify specific types of records these entities must maintain, clarify existing requirements, and make other changes to the existing regulation as discussed below. In drafting these regulatory changes, Legal Division staff consulted with Commission auditing staff, as well staff from the Franchise Tax Board (FTB), and members of the regulated community. Staff presented this proposal to the Commission for pre-notice discussion at its August 24, 2021 meeting.

Background/Overview

One of the primary purposes of the Political Reform Act (the “Act”)¹ 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, and lobbyist employers to file quarterly reports of their lobbying expenditures with the Secretary of State. The reports must include identification information and other specific reporting and accounting requirements specified in the Act.

Further, those engaged in lobbying must maintain records for all receipts and payments for lobbying activity and are subject to mandatory audits. (Sections 86110 and 90001.) A special unit of the FTB is tasked with conducting these mandatory audits, and the findings, known as audit reports, should then be sent to the FPPC. (Section 90000). The Act calls for FTB 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.² When a lobbying firm or lobbyist

¹ All statutory references are to the California Government Code unless otherwise indicated.

² 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

employer is selected for audit, the individual lobbyists employed by that organization is also subject to audit. Both the FTB and the FPPC may also conduct discretionary audits. For an audit to be effective, detailed records must 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. Records obtained by FTB for an audit are returned to the subject of the audit or destroyed, except in circumstances where the records support findings of material violations.

Section 86110 of the Act requires lobbyists, lobbying firms, and lobbyist employers that 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 and 18615, and repeals existing Regulation 18612 with adoption of amended Regulation 18612. These regulations concern accounting and recordkeeping requirements for lobbyists, lobbying firms, and lobbyist employers.

Regulation 18610

Regulation 18610 concerns lobbyist accounting. As pertinent to this proposal, 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.

Additionally, the regulation provides requirements as to the records that must be maintained, recordkeeping requirements for all monetary contributions made to state candidates, and specifies that the information that must be included in these records, as well as a duty to maintain these records 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. As pertinent to this proposal, subdivision (a) requires that a lobbying firm maintain a cash receipts journal showing a record of all payments received in connection with lobbying activity, and specifies the details required in these records.

were selected for audits. For the 2019-2020 audit period, 118 lobbying firms and 189 lobbyist employers were selected for audits.

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 source documents that must be maintained in support of all reportable activity expenses.

Additionally, the regulation provides specific requirements as to the records that must be maintained, recordkeeping requirements for all monetary contributions made to state candidates, and specifies that the information that must be included in these records, recordkeeping requirements that apply where a lobbying firm subcontracts with another lobbying firm for lobbying services, as well as a duty to maintain these records 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. As pertinent to this proposal, subdivision (c) outlines the recordkeeping requirements and source documents that must be maintained in support of all reportable activity expenses.

Additionally, the regulation provides specific requirements as to the records that must be maintained, recordkeeping requirements for all monetary contributions made to state candidates, and specifies that the information that must be included in these records, as well as a duty to maintain these records 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 the language of 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 (b) specifies that a journal, ledger, or other record must be maintained to document all reportable activity expenses, and specifies the information that must be included. Currently, the requirement to maintain a journal or other record is described differently in each of the three regulations. Staff proposes using the term "journal, ledger, or other record" in all three regulations to make this requirement consistent.
- Proposed amended subdivision (c) specifically identifies the categories of source documents that must be maintained by a lobbyist to substantiate information in the journal, ledger or other record. It identifies categories of source documents and provides

some specific examples of records to be maintained, depending on the nature of the transaction and records available.

- Proposed amended subdivision (d) specifies that a written voucher or annotated receipt or invoice must be prepared to support an activity expense in the event a source document cannot be obtained. This narrower exception replaces the broader standard, currently in subdivision (b), which allows for a written voucher to be prepared when it was “impractical” to obtain a receipt or invoice.

Regulation 18612. Accounting by Lobbying Firms.

- Staff proposes to delete existing 18612 and replace it with an updated and reorganized version that incorporates existing provisions as well as updates discussed below.
- Proposed subdivision (b) requires a lobbying firm to maintain a journal, ledger, or other record showing all payments made in connection with state lobbying activity, adding “ledger, or record” to the requirement to maintain a “journal” so that the language is consistent with the other two regulations.
- Proposed subdivision (c) specifically identifies categories of source documents and provides examples of documents to be maintained, depending on the nature of the transaction and records available.
- Proposed subdivision (d) provides a limited recordkeeping exception available only when a lobbying firm is unable to obtain a source document to substantiate an activity expense, which permits the firm to prepare a written dated voucher, or annotated receipt or invoice, in lieu of the source document. This narrower exception replaces the broader standard, currently in subdivision (b), which allows for a written voucher to be prepared when it was “impractical” to obtain a receipt or invoice.

Regulation 18615. Accounting by Lobbyist Employers.

- Proposed subdivision (a) requires lobbyist employers to maintain a journal, ledger, or other record showing all payments made in connection with state lobbying activity, adding “journal, or ledger” to the requirement to maintain records.
- Proposed amended subdivision (c) eliminates the terms “canceled checks or other bank records”
- Proposed amended subdivision (c)(5) adds the requirement that legible images of canceled checks may be maintained in place of the canceled check itself.
- Proposed amended subdivision (d) cross references the duty to maintain records of subdivision (c) and specifically identifies categories of source documents and provides examples of documents that must be maintained by a lobbyist employer in support of any expenditure.

- Consistent with the other two regulations, proposed subdivision (e) provides a limited exception available only when a lobbying firm is unable to obtain a source document to substantiate an activity expense, which permits the firm to prepare a written dated voucher, or annotated receipt or invoice, in lieu of the source document.

Explanations for the Proposed Revisions

Each of the current regulations uses different terms to refer to records lobbying entities must maintain to document lobbying transactions. For purposes of consistency and clarity, the proposed regulations each refer to a “journal, ledger, or other record” to identify the transaction record the entity must maintain. These changes harmonize the language in each regulation but also acknowledge that the term “journal” may be outdated or too restrictive depending on the form of accounting employed by the entity. The proposed changes therefore provide greater flexibility in the type of record the entity may maintain to track receipts and/or payments.

With regard to source documents, while the existing regulations include 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 reporting. By making specific the categories of records that must be maintained and providing examples of such records, these amendments will help to expedite the conduct of audits and provided clarity to a lobbying entity regarding the records it should maintain.

The existing regulations state that a written voucher may be prepared in the event it is impractical to obtain a receipt or an invoice for an activity expense. The proposed regulations would narrow this exception to instances where the source document cannot be obtained. Staff notes that current technology easily allows for vendors to print receipts or invoices, even for transactions that have occurred sometime in the past. Such documents are routinely obtained in Enforcement cases where the documentation is otherwise unavailable. A receipt or invoice prepared by a vendor is likely to be more accurate than an internally generated record prepared after the fact.

Public Comment

Staff received public comment on the draft regulations after they were presented for pre-notice discussion at the August Commission meeting. These comments included concerns that the lists of required source documents were duplicative, and that some larger lobbyist employers do not generate some of the specified records. Staff recognizes that not all the enumerated source documents would necessarily be generated for every transaction. Responsive to these concerns, the current proposed language describing the source documents required to be maintained instead provides the categories of documents and examples of what would be sufficient documentation.

Also in response to public comment suggesting that the use of the term “journal” was outdated, staff has added “ledger, or record” to the recordkeeping requirements to provide more clarity and flexibility to the requirement to maintain internally generated records. The proposed regulations also narrowed the recordkeeping requirements so that only lobbyist employers, those

who actually pay for and invite guests to sponsored events, are required to maintain invitations to these events.

Lastly, during the pre-notice discussion of these proposed regulations, Commissioner Baker expressed concerns with language that required lobbying entities to maintain correspondence and communications “concerning” an expense because it could encompass records not relevant to an audit. The Institute for Governmental Advocates expressed similar concerns in a comment letter dated October 1, 2021. In response, the current proposed language in each regulation instead requires correspondence and communications “substantiating” a reported transaction. In a follow up letter, the Institute for Governmental Advocates indicated the change in wording satisfied its concerns. The Commission also discussed the possibility of correspondence with content not related to the audit being subject to public disclosure as a result of the audit. But, as noted above, records obtained during an audit are, in most instances, returned or destroyed when the audit is completed.

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

For repeal: Regulation 18612