

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations)

§ 18239. Definition of Lobbyist.

(a) Introduction.

(1) If an individual engages in direct communication, other than administrative testimony, with a qualifying official for the purpose of influencing legislative or administrative action on behalf of any person other than his or her employer, apply Section 82039 and subdivision (b) of this regulation to determine if the individual is a lobbyist.

(2) If an individual engages in direct communication, other than administrative testimony, with a qualifying official for the purpose of influencing legislative or administrative action on behalf of his or her employer only, apply Section 82039 and subdivision (c) of this regulation to determine if the individual is a lobbyist.

(3) Except as provided in Section 86300, if an individual is a “placement agent” as defined in Section 82047.3, the individual is a lobbyist for purposes of the Act, regardless of the definitions in subdivisions (b) through (d), below. An individual does not become a placement agent under Section 82047.3 solely as a result of communicating with a state public retirement system representative provided that the individual accompanies a registered placement agent who represents that individual or that individual's organization, is present only to provide additional substantive information, and would not otherwise qualify as a placement agent under Section 82047.3

(b) A lobbyist is an individual who receives or becomes entitled to receive \$2,000 or more in compensation in a calendar month for engaging in direct communication, other than

administrative testimony, with one or more qualifying officials for the purpose of influencing legislative or administrative action.

(c) A lobbyist is an individual who spends one-third or more of the time, in a calendar month, for which the individual receives compensation from his or her employer, engaging in direct communication, other than administrative testimony, with one or more qualifying officials for the purpose of influencing legislative or administrative action.

(d) Definitions.

(1) "Administrative testimony" means either of the following:

(A) Influencing or attempting to influence administrative action by acting as counsel in, appearing as a witness in, or providing written submissions, including answers to inquiries, that become part of the record of any regulatory or administrative agency proceeding:

(i) That is conducted as an open public hearing for which public notice is given;

(ii) Of which a record is created in a manner that makes possible the creation of a transcript; and

(iii) Where full public access is provided to the record or transcript and to all written material that is submitted as part of the record.

(B) Any communication made at a public hearing, public workshop, public forum, or included in the official record of any proceeding, as defined in Section 82002(b) or (c), before the California Public Utilities Commission.

(2) "Compensation" means any economic consideration, other than reimbursement for reasonable travel expenses (i.e., expenses for transportation plus a reasonable sum for food and lodging). Under subdivision (b), if it is established in an administrative or civil action that an individual received or is entitled to receive compensation of \$2,000 or more in a calendar month

from a person for services that include direct communication, other than administrative testimony, with a qualifying official for the purpose of influencing legislative or administrative action, there is a rebuttable presumption affecting the burden of producing evidence that all compensation from that person to the individual during that calendar month is for direct communication. This presumption can be rebutted by evidence that may include testimony, records, bills, and receipts establishing the allocation of the individual's compensation for all other goods and services provided.

(3) “Direct communication” means appearing as a witness before, talking to (either by telephone or in person), corresponding with, or answering inquiries from, any qualifying official, either personally or through an agent who acts under the individual's direct supervision, control, or direction.

(A) Direct communication does not include any request for or provision of purely technical data or analysis to an administrative agency by a person who does not otherwise engage in direct communication for the purpose of influencing legislative or administrative action.

(B) For the purpose of determining whether an individual qualifies as a lobbyist pursuant to subdivision (c), an individual does not engage in “direct communication” when the individual is an employee of a lobbyist employer, meets or speaks with a qualifying official in the company of a registered lobbyist retained by the individual's lobbyist employer, and participates as a subject matter expert regarding a legislative or administrative action at issue. For purposes of this exception, an employee includes a member of a bona fide trade association or membership organization.

(4) “Influencing legislative or administrative action” means communicating directly or taking any other action for the principal purpose of supporting, promoting, influencing, modifying, opposing, delaying, or advancing any legislative or administrative action.

(5) “Qualifying official” means:

(A) Any elected state official;

(B) Any legislative official;

(C) Any appointed, elected, or statutory member or director of any state agency;

(D) Any staff member of any state agency who makes direct recommendations to the persons listed in subdivision (5)(C) of this subdivision, or who has decision-making authority concerning such recommendations.

Note: Authority cited: Section 83112, Government Code. Reference: Section 82039, Government Code.

HISTORY

1. New chapter 2 (section 18239) filed 6-30-75 as an emergency; effective upon filing. Certificate of Compliance included (Register 75, No. 27).
2. Amendment of subsection (e) filed 9-18-75; effective thirtieth day thereafter (Register 75, No. 38).
3. Amendment filed 11-24-78; designated effective 1-1-79 (Register 78, No. 47).
4. Amendment filed 8-27-81; effective thirtieth day thereafter (Register 81, No. 35).
5. Amendment filed 1-25-83; effective thirtieth day thereafter (Register 84, No. 4).
6. Amendment filed 5-7-84 as an emergency; effective upon filing (Register 84, No. 19). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-4-84.

7. Certificate of Compliance transmitted to OAL 7-17-84 and filed 8-21-84 (Register 84, No. 33).
8. Amendment of section and Note filed 3-15-94; operative 3-15-94 (Register 94, No. 11).
9. Repealer and new subsections (a)-(c), new subsection (d)(3)(A) designator and new subsection (d)(3)(B) filed 7-28-97; operative 7-28-97 pursuant to Government Code section 11343.4(d). Submitted to OAL for printing only (Register 97, No. 31).
10. Editorial correction of subsection (d)(1)(C) (Register 2002, No. 22).
11. Amendment filed 6-17-2002; operative 7-17-2002 (Register 2002, No. 25).
12. Amendment of subsections (a)(1)-(2), new subsection (a)(3) and amendment of subsections (d)(1)(A)-(B) and Note filed 2-17-2011; operative 3-19-2011. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2011, No. 7).
13. Amendment of subsection (a)(3) filed 10-3-2013; operative 11-2-2013. Submitted to OAL for filing and printing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2013, No. 40).
14. Amendment of subsection (d)(3)(B) filed 4-12-2016; operative 5-12-2016. Submitted to OAL for filing and printing pursuant to Fair Political Practices Commission v. Office of

Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, unpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 16).

15. Amendment of subsections (a)(2)-(3), (b)-(c) and (d)(2)-(3) filed 8-17-2016; operative 9-16-2016. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, unpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 34).