

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

§ 18616. Reports by Lobbyist Employers and Persons Spending \$5,000 or More to Influence Legislative or Administrative Action.

(a) Payments to be Reported in General. Persons filing periodic reports under Section 86116 must report payments in the following categories:

(1) Payments to lobbying firms.

(2) Payments to lobbyists.

(3) Activity expenses.

(4) Other payments to influence legislative or administrative action, specifically, payments for or in connection with:

(A) Support or assistance of lobbyists;

(B) Direct communication with a legislative, agency, or elective state official for the primary purpose of influencing legislative or administrative action; and

(C) Soliciting or urging persons other than the filer or the filer'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.

(5) Contributions to elected state officers, state candidates, and committees controlled by or primarily formed to support those officers or candidates.

(b) Payments to Lobbying Firms. Lobbyist employers must disclose on their periodic reports the total amount of payments, including reimbursement for expenses, made to each lobbying firm during the period, and the name and address of the lobbying firm that received the payments. If the payment to the lobbying firm was made through another person, the lobbyist

employer must report the name and address of both the payee and the lobbying firm. The lobbyist employer must indicate on the report if the payment was made for services provided in a previous calendar quarter. To the extent that payments to a lobbying firm are only partially in connection with lobbying activities, the lobbyist employer must report only that portion which was made for lobbying activities.

(c) Payments to Lobbyists. Lobbyist employers must disclose on their periodic reports the total amount of all direct and indirect payments, such as salaries and reimbursement of expenses, made to lobbyists during the filing period in consideration for or in connection with their activities as lobbyists. A lobbyist's salary includes gross wages paid plus any benefits that are in lieu of wages such as the granting of stock options or the purchase of annuities. A lobbyist's salary does not include routine fringe benefits that are made on behalf of all employees, such as the employer's contribution to health or retirement plans, or similar benefits; nor does it include the payment of the employer's payroll taxes. To the extent payments made to a lobbyist are only partially in connection with his or her activities as a lobbyist, a filer may apportion the payments based on the percentage of the lobbyist's compensated time that is spent influencing or attempting to influence legislative or administrative action.

(d) Activity Expenses. All persons filing reports under Section 86116 must disclose each activity expense made or incurred during the period, regardless of whether it is paid for during the period. An activity expense previously reported as incurred but not paid need not be reported again when actual payment is made. When reporting activity expenses, the filer must disclose: the full name and address of the payee, the total amount of the expense, the amount attributable to each elected state officer, legislative official, agency official, state candidate or member of the immediate family of one of those persons who is the beneficiary of an activity expense, each

official's full name, title and agency, and a description of the benefit. The filer must also report the total of all activity expenses incurred during the period.

(e) Contributions.

(1) Except as provided in paragraph (2), all persons filing periodic reports under Section 86116 must disclose all monetary and non-monetary contributions totaling \$100 or more made by the filer to state candidates, elected state officers, and committees controlled by or primarily formed to support those officers or candidates. For each reportable contribution, the filer must disclose the date the contribution was made, the candidate, officer, or committee receiving the contribution, and the amount of the contribution.

(2) Notwithstanding paragraph (1), if a filer has made contributions totaling \$100 or more to an elected state officer, state candidate, or a committee controlled by or primarily formed to support an elected state officer or state candidate, and the filer or a committee sponsored by the filer has previously reported those contributions in a campaign statement filed with the Secretary of State, the filer may disclose only the name and identification number of its committee on its periodic report in lieu of the information required by paragraph (1) with respect to those contributions.

(f) Other Payments to Influence Legislative or Administrative Action. All persons who file periodic reports under Section 86116 must report the total of all other payments to influence legislative or administrative action made by the filer during the reporting period, and effective July 1, 2016, must disclose information regarding payments of \$2,500 or more as provided below.

(1) The total amount reported must include the following:

(A) Compensation of Employees Other Than Lobbyists. This includes a proportionate share of the compensation paid to employees other than lobbyists who are engaged for 10 percent or more of their compensated time in a calendar month in or in connection with the activities described in subdivision (a)(4) of this regulation. Such employees include those providing research services and those preparing materials to be used by a lobbyist or to be used in direct communication or in soliciting or urging others to engage in direct communication for the primary purpose of influencing legislative or administrative action. Compensation includes gross wages paid plus any benefits that are in lieu of wages such as the granting of stock options or the purchase of annuities. Compensation does not include routine fringe benefits that are made on behalf of all employees, such as the employer's contribution to health or retirement plans, nor does it include the payment of the employer's payroll taxes.

(B) Payments Other Than Compensation. This includes payments made by the filer for:

(i) Expenses incurred by a lobbyist in connection with his or her activities as a lobbyist.

All such expenses paid directly by the filer must be reported as "other payments to influence legislative or administrative action," regardless of the nature of the expense.

(ii) Expenses incurred by the filer for goods or services used by a lobbyist or used to support or assist a lobbyist in connection with his or her activities as a lobbyist.

(iii) Other expenses that would not have been incurred but for the filer's activities to influence or attempt to influence legislative or administrative action, such as those activities described in subdivision (a)(4) of this regulation, including office overhead and operating expenses, payments to expert witnesses, and expenses incurred by employees other than a lobbyist. However, any expenses associated with office overhead and operating expenses, including rent, utilities, office supplies and subscriptions to legislative tracking services should

not be itemized under subdivision (f)(2), but must be listed on a separate form provided by the Commission as a lump sum.

(2) Other Payments to Influence of \$2,500 or more. Other payments to influence made by the filer during the reporting period totaling \$2,500 or more to a payee must be listed on a separate form provided by the Commission and submitted with the report required under Section 86116. The filer must disclose:

(A) The name and business address of the payee;

(B) The total payments made during the reporting period;

(C) The cumulative amount paid during the calendar year; and

(D) One of the following codes to describe the primary purpose of the payment:

(i) [S] for salary and compensation of employees other than lobbyists as defined under subdivision (f)(1)(A);

(ii) [E] for expenses incurred by a lobbyist and paid directly by the filer, or expenses incurred by the filer for goods or services used by a lobbyist or used to support or assist a lobbyist in connection with his or her activities as a lobbyist;

(iii) [L] for legislative related-services performed by a lobbying firm in the absence of express or implied authorization to engage in direct communication related to researching, monitoring, analyzing or drafting statutes, or recommending strategy, providing advice, or similar services concerning pending or proposed legislative or administrative action under Regulation 18614(b)(2);

(iv) [C] for consultants and government relations, including all contracts for economic consideration with a business entity or individual, other than a lobbying firm or lobbyist,to provide governmental consulting, advocacy, or strategy;

(v) [P] for public affairs, including coalition building, grassroots campaigns and public policy initiatives including news releases, media campaigns, literature and mailings, canvassing, and special events;

(vi) [A] for advertising, including billboards, print, radio, television, text, email and other electronic advertising;

(vii) [R] for research, including feasibility studies, analysis, polling, and public opinion research;

(viii) [V] for lobbying events, including event planning, rentals, equipment, and transportation for members of organizations or the public to meet public officials, hold rallies or attend hearings to influence legislative or administrative action;

(ix) [O] for all other payments not covered by one of the above listed categories.

(g) Exceptions.

(1) Notwithstanding subdivision (f) of this regulation, a filer need not report compensation or other payments for services that are solely secretarial, clerical, or manual or are limited solely to the compilation of data and statistics.

(2) Except for payments to lobbyists and the compensation of employees other than lobbyists that must be reported under subdivision (f)(1)(A), a filer need not report any regular, ongoing business overhead that would continue to be incurred in substantially similar amounts regardless of the filer's activities to influence legislative or administrative action.

(3) A filer does not have to report any part of the costs of producing a regularly published newsletter or periodical whose circulation is limited to an organization's members, employees, shareholders, other affiliated individuals and those who request or purchase the publication. This exception applies only to those costs regularly incurred in publishing and distributing the

newsletter or periodical. If additional costs are incurred because the newsletter or periodical is issued on other than its regular schedule, expanded in circulation, or altered in style, size, or format for the primary purpose of influencing or attempting to influence legislative or administrative action, such additional costs are reportable under subdivision (f)(1)(B).

(4) Except as provided in Section 86116.5, which is applicable to all state and local agencies that file reports pursuant to Sections 86115 and 86116, dues or similar payments made by any person for membership in a bona fide association, including any federation, confederation, or trade, labor, or membership organization, some portion of which is used to influence legislative or administrative action, are not payments to influence legislative or administrative action.

(5) Reduced Reporting. In lieu of reporting expenses in accordance with subdivision (f), a filer that makes payments to influence a ratemaking or quasi-legislative proceeding, as defined in Section 82002(b) or (c), before the California Public Utilities Commission may report the total of any payments made for the following:

(A) Compensation paid to all attorneys for time spent appearing as counsel and preparing to appear as counsel in those proceedings, excluding time spent preparing written testimony for those proceedings

(B) Compensation paid to all witnesses for time spent testifying; and preparing to testify in those proceedings, excluding time spent preparing written testimony for those proceedings; and,

(C) For purposes of subdivision (g)(5), “compensation” has the same meaning as in subdivision (f)(1).

(D) The reduced reporting of Section 86116(h)(2) and this subdivision does not apply to payments to an individual who is a lobbyist under Section 82039, to payments for expenses incurred by that individual or to payments described in subdivision (a)(4)(C).

(h) Optional Reporting. In addition to reporting total payments for any period, a filer may apportion payments reported on the basis of whether they were made to influence legislative action or to influence administrative action.

(i) Applicability of Section 86115(b). For the purpose of determining whether Section 86115(b) is applicable to any person, all payments made during any calendar quarter that are required to be reported by this regulation should be combined and a report must be filed if the total is \$ 5,000 or more. If, however, the only reportable payments made are activity expenses under Section 86111(a), no report is required.

(j) Reporting Specific Lobbying Interests.

(1) The filer must report each bill or administrative action with regard to which a partner, owner, officer or employee of the filer, or a lobbying firm with which the filer has contracted, either has engaged in direct communication, or has been directed by the filer to engage in direct communication, with a qualified official for the purpose of influencing legislative or administrative action on behalf of the filer during the reporting period, either by reference to its legislative or administrative identification number or by brief textual description.

(2) A filer should not report bills or administrative actions that have died prior to the reporting period, bills or administrative actions that the filer or its agent is only watching or monitoring, or bills or administrative actions that the filer or its agent has not attempted to influence during the reporting period.

(3) The definitions contained in Regulation 18239 of the terms "direct communication," "qualifying official," and "influence legislative action" apply to this subdivision.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 86115, 86116 and 86116.5, Government Code.

HISTORY

1. New section filed 10-13-78 as an emergency; designated effective 1-1-79 (Register 78, No. 41).
2. Certificate of Compliance filed 11-24-78 (Register 78, No. 47).
3. Amendment of subsection (d) filed 12-19-79 as an emergency; effective upon filing. Certificate of Compliance included (Register 79, No. 51).
4. New subsection (e) filed 1-25-80; effective thirtieth day thereafter (Register 80, No. 4).
5. Amendment filed 3-8-84; effective thirtieth day thereafter (Register 84, No. 10).
6. Amendment of subsection (e) filed 5-29-84; effective thirtieth day thereafter (Register 84, No. 22).
7. Repealer and new section filed 5-28-86 as an emergency; effective upon filing (Register 86, No. 22). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-25-86.
8. Certificate of Compliance filed 9-15-86 (Register 86, No. 38).
9. Amendment of subsections (e)(1), (e)(2) and (j)(3) filed 10-21-88; operative 11-20-88 (Register 88, No. 46).
10. Amendment filed 3-28-94; operative 3-28-94 (Register 94, No. 13).
11. Editorial correction of subsections (d) and (j)(3) (Register 95, No. 6).

12. Amendment of subsection (b) filed 5-26-98; operative 5-26-98. Submitted to OAL for printing only pursuant to *Fair Political Practices Commission v. Office of Administrative Law, Linda Stockdale Brewer*, Sacramento Superior Court, Case No. 51275 (1991) (Register 98, No. 22).

13. Amendment filed 6-17-2002; operative 7-17-2002 (Register 2002, No. 25).

14. Amendment of subsections (g)(5) and (g)(5)(D) filed 5-17-2004; operative 5-17-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 21).

15. Amendment filed 2-4-2016; operative 3-5-2016, pursuant to title 2, California Code of Regulations, section 18312(e). Submitted to OAL for printing and 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 2016, No. 6).

16. Amendment of subsection (f)(2)(D)(viii) 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, 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 2016, No. 16).