

LOBBYING FILER: QUALIFICATION RULES

This chapter identifies persons who are required to disclose lobbying activity under the Act. You will find the qualifications for each type of lobbying filer as well as user-friendly examples. This chapter also provides common exceptions, as not every person who communicates with state officials must file lobbying reports.

A. General Definitions

The following definitions describe what one might commonly refer to as “lobbying” and provide guidance for later discussions of the terms “lobbyist,” “lobbying firm,” “lobbyist employer/lobbying coalition,” and “\$5,000 filer.”

Direct Communication

An individual engages in “direct communication” when he or she appears as a witness before, talks to (either by telephone or in person), corresponds with, or answers questions or inquiries from any qualifying official, either personally or through an agent who acts under the individual’s direct supervision, control or direction.

“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.
- An individual who is an employee of a lobbyist employer who meets or speaks to a qualifying official as a subject matter expert regarding legislative or administrative action while accompanied by a registered lobbyist retained by the individual’s employer. Under this exception, an employee includes a member of a bona fide trade association or membership organization.

Qualifying Official

A “qualifying official” is

- Any elected state official;
- Any legislative official;
- Any appointed, elected, or statutory member or director of any state agency;
- Any staff member of any state agency who makes direct recommendations to any appointed, elected, or statutory member or director of any state agency, or who has decision-making authority concerning such recommendations.

Influencing Legislative or Administrative Action

“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.

Legislative action: The drafting, introduction, consideration, modification, enactment or defeat of any bill, resolution, amendment, report, nomination or other matter by the Legislature. “Legislative action” also includes the action of the Governor in approving or vetoing any bill.

Administrative action: The proposal, drafting, development, consideration, amendment, enactment, or defeat by any state agency of any rule or regulation. It also includes actions in certain ratemaking proceedings and quasi-legislative proceedings.

With regard only to placement agents, administrative action includes a state agency’s decision to enter into a contract to invest state public retirement system assets on behalf of a state public retirement system.

Administrative Testimony

“Administrative testimony” means 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 that is conducted as an open public hearing for which public notice is given, of which a record is created in a manner that makes possible the creation of a transcript, and where full public access is provided to the record or transcript and to all written material that is submitted to become part of the record.
- Certain proceedings of the California Public Utilities Commission.

B. Lobbyists

An individual who engages in **direct communication with a qualifying official** (other than administrative testimony) for the purpose of influencing legislative or **administrative action** qualifies as a lobbyist if he or she meets one of the following criteria:

- **In-House Lobbyist:** An individual who lobbies on behalf of his or her employer only and spends at least one-third of his or her compensated time in a calendar month engaging in direct communication with qualifying officials.
- **Contract Lobbyist:*** An individual who lobbies for someone other than his or her employer and receives or is entitled to receive **\$2,000** or more in a calendar month engaging in direct communication with qualifying officials.

***Rebuttable Presumption Applicable to Contract Lobbyists:**

There is a rebuttable presumption that certain payments made to a contract lobbyist are for direct communication with a qualifying official for the purposes of influencing legislative or administrative action if certain facts are established:

Quick Tip

Although the Act only considers direct communication for purposes of qualifying as a lobbyist or lobbying firm, once an individual or entity qualifies as a lobbyist or lobbying firm, the individual or entity must report other types of lobbying expenses, such as payments for administrative testimony.

- The individual receives or is entitled to receive compensation from a client for services that include direct communication with a qualifying public official to influence action,
- The compensation is \$2,000 or more, and
- The compensation is for services in a calendar month.

Once these basic facts are established, it could be presumed that the payment was for direct communication with public officials unless the individual offers evidence that the payment was for other services. 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. If the individual offers sufficient evidence to rebut, the presumption is disregarded and the competing evidence is weighed to make a factual finding on the issue.

Placement Agent: An individual who:

- Is hired, engaged, or retained by, or serving for the benefit of or on behalf of, an external manager or on behalf of another placement agent, and
- Acts or has acted for compensation as a finder, solicitor, marketer, consultant, broker, or other intermediary in connection with the offer or sale of the securities, assets, or services of an external manager to a board or investment vehicle, either directly or indirectly.

Placement Agent Exceptions:

- Certain individuals who spend one-third or more of their time during a calendar year managing the securities or assets the external manager holds;
- Certain individuals who are affiliated with an external manager who is registered as an investment adviser or broker-dealer with the Securities and Exchange Commission (SEC), who participates in a competitive bidding process, and who agrees to a defined fiduciary standard of care.

See Government Code Section 82047.3 for more information about placement agents.

Ex 1.1 - Gail West is a partner with the CJW Law Firm. Gail lobbies bills on behalf of several clients. She frequently engages in direct communication with various legislators and their staff. In January, she receives \$4,200, \$2,000 of which she attributes to direct communication. Gail qualifies as a contract lobbyist under the “compensation test” and must prepare a lobbyist certification report and file quarterly reports. In addition, CJW must register and file quarterly reports as a lobbying firm. Any client who authorizes the CJW Law Firm to lobby must also file authorization forms and quarterly reports as lobbyist employers, regardless of the amount they pay.

Ex 1.2 - Joe Nelson, an independent contractor, receives \$1,500 from the ABC Corporation and \$700 from a trade association to engage in direct communication with legislators on behalf of the corporation and the trade association. Joe qualifies as a contract lobbyist and must register as a lobbying firm and a lobbyist. The compensation test does not require receipt of \$2,000 from a single client. Joe’s clients will also register as lobbyist employers and file reports.

Ex 1.3 - Maya Gomez is the EAB Corporation’s legislative coordinator. In May, Maya spends one-third of her compensated time testifying at legislative hearings and speaking on the telephone with legislative and agency officials concerning several legislative bills and state agency regulations. Maya qualifies as an in-house lobbyist and must prepare a lobbyist certification report and file quarterly reports. In addition, EAB Corporation must register and file quarterly reports as a lobbyist employer.

Who is Not a Lobbyist?

- An individual who only engages in activities to secure a grant, contract (other than a state pension contract), or permit from a state administrative agency and does not otherwise attempt to influence legislative or administrative action.
- An individual who lobbies on a voluntary (unpaid) basis.
- An individual who only receives reimbursement for reasonable travel expenses incurred in connection with lobbying state public officials.
- A state agency employee or a consultant designated in a state agency's conflict of interest code who acts within the scope of his or her duties or contract. Such individuals, however, are subject to the \$10 per month gift limit.
- An individual representing a bona fide church or religious society solely for the purpose of protecting the public's right to practice the doctrines of that church.
- An individual representing a newspaper or other periodical of general circulation, book publisher, or radio or television station that, in the ordinary course of business, publishes or airs items urging legislative or administrative action. This exception does not apply when the newspaper, book publisher, or station engages in any additional activities in connection with influencing legislative or administrative action.
- An individual who only lobbies federal, county, multi-county (e.g., BART), local special districts, or city government agencies.
- An individual who engages only in administrative testimony.

Ex 1.4 - MBI Corporation hired Norman Nickels for the sole purpose of securing a contract with the Department of General Services to provide computer services. Norman is not subject to either the compensation or time tests because the Act does not consider such activity "influencing legislative or administrative action."

Ex 1.5 - An attorney receives \$2,500 for appearing before the State Clean Air Advisory Board and providing expert testimony that becomes a part of the Board's record. The Board publicly notices, transcribes, and conducts the meeting as an open public hearing. As long as the attorney's paid services are limited to administrative testimony, the attorney does not qualify as a lobbyist.

Ex 1.6 - An executive director of a trade association spent one-third of his compensated time in a calendar month writing and presenting administrative testimony at a state agency public hearing and also several hours meeting directly with legislative staff. The director does not qualify as a lobbyist because the time he spent on administrative testimony does not count toward the compensated "time" test and his time talking to legislative staff was less than one-third of his time in a calendar month.

C. Lobbying Firms (Including Individual Contract Lobbyists)

A lobbying firm is ***an individual*** (other than an in-house lobbyist) ***or a business entity that is compensated*** (other than reimbursement for reasonable travel expenses) ***for directly communicating with a qualifying official*** (other than administrative testimony) ***when trying to influence legislative or administrative action*** (such as bills, regulations and state pension contracts).

An **individual** may qualify as a lobbying firm in two ways:

- The individual is a lobbyist compensated for lobbying on behalf of someone other than the individual's employer (such as independent contractors); **or**
- The individual is a lobbyist compensated for lobbying on behalf of the individual's employer AND someone else.

Ex 1.7 - Robert Rogers is an in-house lobbyist for the Association of International Roofing Contractors. During the third quarter of the calendar year, the Dome Corporation pays Robert to lobby a bill on its behalf. Robert, though still an employee of the Association, must register as an individual contract lobbyist (lobbying firm) and disclose on his Form 625 quarterly reports the payments received from the Dome Corporation and his compensation for lobbying services provided on behalf of the Association. The Association must file an Amendment, Form 605, deleting him as an in-house lobbyist, and complete an Authorization Form, Form 602 (Lobbyist Employer).

Ex 1.8 - Megan Moen was a lobbyist for Communications, Inc., a lobbying firm. She left to work as a lobbyist for another lobbying firm, Capital Services. Communications, Inc. wants to retain Megan directly (not Capital Services) to lobby on behalf of one of its clients. To lobby for clients of both Capital Services and Communications, Inc., Megan must register as a separate lobbying firm. Her lobbying firm would indicate that it is a subcontractor to Communications, Inc. and Capital Services.

For the public to easily determine all of the clients of an individual lobbyist, the lobbyist is not registered separately with different clients, rather the lobbyist's clients are associated with the lobbyist's registration.

A **business entity** may qualify as a lobbying firm when:

- The entity receives or is entitled to receive compensation for lobbying; and at least one employee, partner, owner, or officer is a lobbyist; **or**
- The entity receives at least \$5,000 in a calendar quarter for lobbying; and at least one employee, partner, owner, or officer directly communicates with reportable officials on behalf of a client (even if no one in the firm is a lobbyist).

D. Lobbyist Employers

A lobbyist employer is any individual, business entity, association, local government agency, or other organization, other than a lobbying firm, that:

- Directly employs an in-house lobbyist to influence or attempt to influence legislative or administrative action; or
- Retains a lobbying firm to engage in direct communication for the purpose of influencing or attempting to influence legislative or administrative action.
- Refer to FPPC regulation 18614 for payments considered lobbying services.

Ex 1.11 - Lansdown International contracts with Pickett & Winnit, a public relations firm. On Lansdown's behalf, Pickett & Winnit hires the lobbying firm of Capital Crusaders to lobby a tax-related bill. Pickett & Winnit makes payments to Capital Crusaders for its lobbying services and Lansdown reimburses Pickett & Winnit. As a lobbyist employer, Lansdown must provide Capital Crusaders with an authorization statement and file quarterly lobbying reports. Both Lansdown and Capital Crusaders must disclose on the quarterly disclosure statements that Pickett & Winnit made and received payments. Pickett & Winnit is not required to register or report the payments because Pickett & Winnit does not lobby but instead has hired Capital Crusaders to lobby on Lansdown's behalf.

Ex 1.9 - Camptown Corporation hired the lobbying firm of Johnson Communications to present administrative testimony. Camptown does not employ an in-house lobbyist. By retaining a lobbying firm, however, Camptown qualifies as a lobbyist employer. Prior to engaging in any lobbying activity, Johnson Communications must add Camptown to its registration statement. Camptown must complete an authorization statement and file quarterly lobbying reports.

Ex 1.10 - Wayne Butterfield's principal duties include direct communication to influence legislative or administrative action on behalf of his employer, the Association of Preservationists. Because Wayne spends one-third or more of his time lobbying in a calendar month, he qualifies as a lobbyist and the Association a lobbyist employer.

Who is Not a Lobbyist Employer?

- A person who only makes payments to a lobbying coalition is not required to file lobbyist employer reports. Such a person is required, however, to file reports as a “\$5,000 Filer” if the person makes payments to a lobbying coalition totaling \$5,000 or more during a calendar quarter.
- A person who hires an entity (that is not a lobbying firm) for the sole purpose of providing administrative testimony.
- A person who hires a lobbying firm for the sole purpose of monitoring and/or drafting legislation.

E. Lobbying Coalitions

A lobbying coalition is a group of **ten or more** persons or entities formed primarily to influence legislative or administrative action whose members make payments to the coalition for the purpose of sharing the expenses of employing a lobbyist or contracting for the services of a lobbying firm.

Who is Not a Lobbying Coalition?

- A bona fide federation, confederation, trade association, or labor or membership organization that is ongoing in nature and whose membership services are not limited to influencing legislative or administrative action. Such an organization will qualify as a lobbyist employer if it employs an in-house lobbyist or makes payments to a lobbying firm.
- A group consisting of fewer than ten persons or entities formed primarily to influence legislative or administrative action whose members make payments for the purpose of sharing the expenses of employing a lobbyist or contracting for the services of a lobbying firm. Each of the persons or entities, however, will qualify as a lobbyist employer.

Ex 1.12 - The Recycle Now Corporation makes a payment to a law firm that is not a lobbying firm, to prepare and present testimony for a public hearing of the California Integrated Waste Management Board. Except for the testimony that becomes part of the public record at the hearing, the firm does not communicate with officials. Because the payment to the law firm is only for administrative testimony, Recycle Now does not qualify as a lobbyist employer.

Ex 1.13 - Fifteen manufacturers pool their funds and contract with the Best Lobbying Firm to lobby legislation. The group qualifies as a lobbying coalition and must complete the authorization statement, Form 602, and file quarterly lobbying reports disclosing payments to the lobbying firm as well as payments received from the coalition members. But each manufacturer is not required to file lobbying reports unless \$5,000 is paid in a quarter (\$5,000 filer).

Ex 1.14 - Eight companies pool their funds to hire a lobbying firm for the purpose of influencing a legislative bill. The companies plan to have more entities pay toward the lobbying firm’s expenses. Until there are ten companies making payments to the lobbying firm, the entities do not qualify as a lobbying coalition, but do qualify separately as lobbyist employers. Each of the eight companies must file the authorization statement, Form 602, and file quarterly lobbyist employer reports, Form 635.

Lobbying coalitions and lobbyist employers have common reporting obligations so examples of lobbying coalition disclosure requirements are incorporated with the lobbyist employer sections of this manual.

Lobbying coalitions must file an attachment, Form 635-C, with each quarterly filing. In addition, a coalition member must file an attachment, Form 630, with each quarterly filing if the coalition member files reports as a lobbying firm, lobbyist employer, or \$5,000 filer.

F. Persons Who Spend \$5,000 or More to Influence Legislative or Administrative Action

“\$5,000 Filers”

Persons (including business entities, associations, and other organizations) who do not employ an in-house lobbyist or contract with a lobbying firm, but who directly or indirectly make payments of \$5,000 or more in any calendar quarter to influence or attempt to influence legislative or administrative action, have disclosure obligations as \$5,000 filers. The following types of payments must be aggregated to determine if the \$5,000 threshold has been met:

- Payments for or in connection with direct communication with state officials;
- Payments for or in connection with soliciting or urging other persons to enter into direct communication with state officials;
- Payments to an organization, other than regular dues payments, for the purpose of hiring a lobbyist;
- Payments to a lobbying coalition; and
- Payments that directly or indirectly benefit state officials or members of their immediate families (“activity expenses”), but only if other payments to influence are made during the same calendar quarter.

For purposes of determining whether a person qualifies as a \$5,000 filer, compensation the person pays to an employee (other than a lobbyist or an employee that provides clerical, secretarial, manual, or statistical services) must be counted if the employee spends 10% or more of his or her compensated time in a calendar month in connection with the activities described above.

All payments for travel and expenses a person incurs in connection with these activities, however, must be counted whether or not the employee spends 10% or more of his or her time on lobbying activities.

Persons who qualify as \$5,000 filers must file the Form 645, Report of Person Spending \$5,000 or More to Influence Legislative or Administrative Action, for each calendar quarter in which the person spends \$5,000 to influence legislative or administrative action. No paper copy is required as this report is filed electronically.

Ex 1.15 - In February, the Valencia Corporation sends an employee to Sacramento to testify before the Legislature. The employee spends more than 10% of his time during the month preparing and presenting the testimony and the associated expenses exceed \$5,000. The corporation qualifies as a \$5,000 filer and must file a report for the first quarter, January 1 - March 31.

Ex 1.16 - In April, the Association of Valley Growers pays for newspaper advertisements urging readers to communicate with the Governor for a legislative veto. The total cost of the advertisements exceeds \$5,000 during the second calendar quarter. The Association qualifies as a \$5,000 filer and must file a report for the second quarter, April 1 - June 30.

Ex 1.17 - The Association of Preservationists is a lobbyist employer and pays its in-house lobbyist from the general membership dues fund. In one quarter, however, the Association receives \$6,000 from each member as a special assessment to pay a lobbying firm. Those members that paid the assessment will each qualify as a \$5,000 filer.

Answering Your Questions

- A. I work for a public relations firm. On behalf of a client, I attend meetings to discuss with legislators the client's positions on legislative issues and am accompanied by the client's contract lobbyist. Must I count the time at these meetings toward qualifying as a lobbyist?**

Yes, as you are engaging in "direct communication." The exception for engaging in direct communication in the presence of a lobbyist applies to individuals who are employees of the client, meet or speak with a qualifying official in the company of the lobbyist, and participate as a subject matter expert regarding a legislative or administrative action at issue.

- B. The Department of Housing and Community Development has just requested proposals from building contractors to provide a number of low and moderate-income housing units throughout the state. We would like to bid on the contract. Because we are trying to influence the decisions of an administrative agency, are we engaged in lobbying?**

No. While the Department is an administrative agency, awarding a contract is not considered administrative action.

Exception: With regard only to placement agents, administrative action includes the decision by a state agency to enter into a contract to invest state public retirement system assets on behalf of a state public retirement system.

C. Our agency is supporting an Indian gaming compact. To do so, we will contact the Governor's office and discuss why we think the Governor should sign the compact. Is this lobbying?

Yes. Supporting an Indian gaming compact has been determined to be an administrative action, and the Governor's office is an administrative agency for this purpose. Therefore, attempting to influence the Governor concerning these compacts qualifies as lobbying.

D. Would an individual qualify as a lobbyist if he or she were paid \$2,000 or more in a calendar month to meet with senators and their staff regarding an executive branch appointment that must appear before the Senate for confirmation?

Yes. This is direct communication to influence a legislative action. This is a direct contact that counts towards the in-house or contract lobbyist registration threshold.

E. Is lobbying the Governor and the Governor's staff regarding an executive branch appointment considered influencing legislative or administrative action?

No. The Governor's action to make an appointment is not an administrative action. But, it is a "legislative action" if an individual appears before a Senate hearing for confirmation, so lobbying the legislature to support or oppose an appointment is a direct contact.

F. Is compensation for travel time and preparation work for the purpose of influencing legislative or administrative action counted for purposes of determining whether an individual qualifies as a lobbyist?

Only the compensation (e.g., salary) for preparation work an individual receives while engaging in direction communication is counted to determine if an individual qualifies as a lobbyist. Payment for travel expenses do not count. Preparation work includes legal research, developing testimony, attending meetings if such activities are in connection with direct communication. The preparation of background studies undertaken for purposes other than to lobby are not counted even if the studies are cited in testimony.

G. Will an entity qualify as a lobbying firm if, in a calendar quarter, the entity receives \$4,500 from a client for testifying before a hearing of the State Legislature and \$600 for travel expenses?

No. Because payments for reasonable travel expenses do not count toward qualifying as a lobbying firm, the firm will not have met the qualifying threshold of \$5,000.

H. May an entity file registration forms as a lobbying firm even if it has not yet qualified as a lobbying firm?

Yes. The Act does not prohibit an entity that engages in direct communication with qualifying officials from filing the registration forms even if the entity has not met the regulatory requirements.

I. Once an individual qualifies as a lobbyist, are travel expenses incurred for the purpose of influencing legislative or administrative action reportable?

Yes. These and other expenses are reportable once an individual has qualified as a lobbyist.

J. Will a member of a bona fide association become a lobbyist employer by making regular dues payments to the association when a portion is used for lobbying activity?

No. A member of an association will not qualify as a lobbyist employer by making regular dues or similar payments for membership in a bona fide association, even if the association uses a portion of the dues or similar payments to employ a lobbyist or make other payments to influence legislative or administrative action.

If a member of an association makes a payment or if the association solicits an additional dues payment earmarked for lobbying purposes, however, the member may qualify as a lobbyist employer or \$5,000 filer.

K. Fifteen companies, all in the gravel business, decide to become a lobbying coalition and hire a lobbying firm to lobby the Legislature on bills affecting their industry. Each company provides Earthmovers, Inc., one of the companies, \$1,200 per month to pay the lobbying firm. Is Earthmovers, Inc. a lobbyist employer?

No. If Earthmovers, Inc. is acting only as the administrative agent for the lobbying coalition, it will not become a lobbyist employer. Because no single company is paying \$5,000 or more in a calendar quarter for lobbying services, none of the companies will qualify as a "\$5,000 Filer." The lobbying coalition must register and file reports.

L. Our firm anticipates contact with the pension program administrators for the University of California. Must our firm's placement agents register as lobbyists?

Yes. The law provides no exemptions for the University of California's pension system.

M. Is a business entity required to file lobbying reports if it provides assistance with obtaining the California Competes Tax Credit through the Office of Business and Economic Development to other business entities?

No. Obtaining applications for tax credits is not supporting or opposing the drafting of state agency rules, regulations or ratemaking proceedings and is not influencing administrative or legislative action.

N. Does an individual qualify as a lobbyist if the individual's only source of income is from a private company for the purpose of contacting legislators to urge the legislators to influence a state agency to issue a new request for proposal ("RFP")?

No. Contacting a legislator solely for assistance in influencing a state agency, other than the Legislature, to issue a new request for proposal does not trigger the Act's lobbyist provisions because the contact is not considered "influencing legislative or administrative action." This conclusion, however, is strictly limited to communications or appearances regarding the issuance of a RFP by a state agency other than the Legislature. Because communications are very fact specific, individuals are strongly encouraged to contact the FPPC and provide specific facts when communicating with legislators on state agency matters to ensure compliance with the Act's lobbying provisions.

Authority

The following Government Code sections and Title 2 regulations provide authority for the information in this chapter:

Government Code Sections

82002	Administrative Action.
82025.3	External Manager.
82032	Influencing Legislative or Administrative Action.
82037	Legislative Action.
82038.5	Lobbying Firm.
82039	Lobbyist.
82039.5	Lobbyist Employer.
82045	Payment to Influence Legislative or Administrative Action.
82047	Person.
82047.3	Placement Agent.
86115	Periodic Reports; Employers and Others.
86300	Exemptions.

Title 2 Regulations

18202	Quasi-Legislative Administrative Action.
18238.5	Definition of Lobbying Firm; Individual Contract Lobbyist.
18239	Definition of Lobbyist.
18239.5	Lobbyist Employer.
18249	State Agency.
18614	Payments for Lobbying Services.
18616.4	Reports by Lobbying Coalitions Which are Lobbyist Employers; Reports by Members of Lobbying Coalitions.