advocacy resource

SHAPING THE FUTURE:

A Compliance Guide for Nonprofits Influencing Public Policy in California

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An initiative of Alliance for Justice

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Alliance for Justice
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Preface

The Bolder Advocacy initiative of Alliance for Justice (AFJ) is pleased to present *Shaping the Future: A Compliance Guide for Nonprofits Influencing Public Policy in California*, the definitive guide to the state's lobbying laws and regulations for nonprofit organizations. AFJ has long been the leading national expert on federal advocacy rules and requirements for nonprofit organizations, and we are extremely proud to bring our expertise to bear on California's statewide regulations.

Francis Bacon is correct: knowledge is power. Knowledge is also a prerequisite for developing the confidence of nonprofit groups to be full and energetic participants in the legally complex, but vitally important, policy environment of California.

AFJ created this resource not just to help nonprofit organizations stay safely within the boundaries of the law when engaging in advocacy activities, but also to ensure that those groups (and their boards and funders) understand that California's registration and reporting requirements are *not* barriers to implementing effective lobbying strategies.

In this age of growing civic action, and in the face of an increasingly combative political environment, nonprofit organizations of all types must be full participants in our democracy's policy-making and political processes. Groups with a public mission cannot afford to sit out California's policy battles; there is simply too much at stake. But in order to get in the game, they first must understand the sometimes perplexing rules that govern their involvement.

That is where *Shaping the Future: A Compliance Guide for Nonprofits Influencing Public Policy in California* comes in.

This resource goes step-by-step through the provisions of the California Political Reform Act, the regulations covering lobbying recordkeeping and disclosure, specific provisions such as gift rules, and the explicit requirements that apply to public charities and private foundations. With the guidance and information found inside these pages, nonprofit organizations can confidently enter the lobbying arena and fight for their ideals, principles, and programmatic priorities.

Alliance for Justice is very proud of this publication and of the extraordinary work by our staff and partners that made it possible. Shaping the Future was authored by attorneys Diane Fishburn of Olson, Hagel & Fishburn and Melissa Mikesell, West Coast Director at Alliance for Justice. Primary direction was provided by Alliance for Justice staff attorneys Abby Levine, Legal Director; with assistance from Nayantara Mehta, Senior Counsel; Daren Garshelis, Counsel; Lindsay Ryder, Legal Associate; Nancy Chen, former Staff Counsel; and Ben Malley, Summer Legal Associate. Special thanks to consultant Jennifer Lee who helped in research and development. The efforts of the rest of the staff at Alliance for Justice were also essential to the project.

We are confident that, by encouraging nonprofit participation in advocacy projects, this resource guide will make a significant contribution to California's democratic traditions and the power of nonprofit groups to shape the state's future.

Nan Aron
President, Alliance for Justice

Executive Summary

This publication is designed to serve as a comprehensive guide to California's lobbying laws. This technical guide is to be used by organizations that carry out extensive lobbying work in California. Its level of detail serves to educate these groups fully on California's lobbying law so they can comply with its requirements for registration and reporting, as well as various other lobbying regulations. If your organization is required to comply with lobbying registration and reporting requirements, this publication will serve as a step-by step guide to everything you need to know about state-level lobbying in California.

The information contained in this publication, in its entirety, will be far more than what many groups will need to know regarding California lobbying law. California lobbying laws only apply to groups and individuals that meet a relatively high threshold of lobbying activity, so many groups that carry out advocacy work in California will not need to comply with the requirements discussed in this guide. To determine if your organization reaches threshold, please review Chapter 2, *Thresholds for Filing Lobbying Reports*, on page 5. For a general overview of California's lobbying laws and how they might affect your organization, Alliance for Justice provides plain-language factsheets on this topic and an introductory guide on California lobbying laws as part of our State Law Resources. These materials and others are available on our Website at http://bolderadvocacy.org/navigate-the-rules/state-resources.

In determining whether and how the California lobbying law applies to your organization, consider these key points:

- Groups whose advocacy work is limited to supporting or opposing ballot measures in California will *not* have to register or report as lobbyists, as ballot measure activity is not considered lobbying under California law, but is instead regulated by California campaign finance laws. An introductory guide to California ballot measure law is available on our Website at http://bolderadvocacy.org/navigate-the-rules/state-resources
- If your organization pays someone to lobby (either staff or consultant) or otherwise spends money in an attempt to influence state-level legislation or administrative action, you should monitor this spending and check if you meet the threshold for registering and reporting in California.
- It is important to remember that even those groups that do not conduct enough lobbying in California to trigger registration and reporting requirements must still track and report their lobbying activities on their annual Form 990 to the IRS. Please review Chapter 1, Section 2, *Comparing the CPRA to Federal Tax Law* on page 3, for more information on this topic.

Below are some common advocacy activities performed by nonprofits. If your organization conducts any of the following activities, this chart will help you determine how this publication will be of use. As outlined above, there are situations where this guide provides more information than you need. For further information on some topics, we have directed you to other resources. As always, feel free to contact us if you are uncertain as to whether your organization might be required to comply with California lobbying laws.

How Can My Organization Utilize this Publication?

Type of Activity	Applicable Regulations
We only do work on California ballot measures.	You will not qualify as a lobbyist in California, but you might have to file a campaign finance report. Please visit http://bolderadvocacy.org/navigate-the-rules/state-resources for more information or see the forthcoming AFJ publication on California Ballot Measure Activity.
We do not have a lobbyist on staff, but we pay a consultant or contractor to lobby for us	You will likely qualify as a lobbyist employer and be required to file registration and reporting statements (Chapter 2, Section 3, page 15).
We do not pay anyone (either staff or consultant) to lobby, but we pay for advertisements to urge the general public to contact their representatives regarding certain legislation.	If you spend enough money on these activities, you will likely be required to file lobbying disclosure reports (Chapter 2, Section 2, page 6).
We only do lobbying at the local and/or county levels.	Your activities will not be regulated by California lobbying laws. However, you might be regulated by local laws. Please visit www.bolderadvocacy.org to view our factsheet on California City, County, and Special District Local lobbying Ordinances.
We only occasionally lobby, but we often offer free admission to our events to our local assembly member and her staff.	Nonprofit organizations are permitted to make gifts, including free admission to nonprofit events, to state or local elected officials and staff. State law limits the amount you can gift to an official each year and provides specific rules for valuing gifts. Please see Chapter 4, Section 7, page 58 on the gift and travel rules for state and local officials in California.

Contents

Chapter 1: Overview Of The California Political Reform Act

1. About the Agencies

Your 501(c)(3) public charity can provide an important voice for your constituents in California state government. However, in order to do that, you will need a basic understanding of the laws regulating your participation in California's state government process. Nonprofits must be aware of two sets of laws: the federal tax laws and regulations that limit lobbying by all 501(c)(3) public charities and the California laws that require disclosure of certain lobbying activities.

Nonprofits must be aware of two sets of laws: federal tax law and California law.

Organizations lobbying the California Legislature as well as state-level administrative agencies, boards, and commissions may be regulated by the California Political Reform Act (CPRA or California lobbying disclosure law). This law was adopted as an initiative by the voters of California in 1974 as a way to ensure that, among other things, the activities of lobbyists in California would be regulated and their finances would be disclosed to avoid "improper influences" from being directed at public officials. Its purpose is to disclose the role of money in state politics by allowing the public to know who is influencing state-level decisions and who is paying for those activities.

The Internal Revenue Code, administered by the Internal Revenue Service (IRS), limits the amount of lobbying in which a 501(c)(3) may engage each year under either the "Insubstantial Part" test or the 501(h) expenditure test. The CPRA is broader; it applies equally to all persons and groups, including 501(c)(3) and non-(c)(3) organizations, as well as to for-profit corporations and businesses and unincorporated associations.[1] It also regulates candidate campaigns and ballot measure campaigns. California's lobbying disclosure law is simply a sunshine law; it does not limit how much lobbying an organization can do, but it requires organizations that spend a certain amount of money on state-level lobbying to file reports disclosing the organization's lobbying expenses. As you will see below, the thresholds for filing reports under California law are fairly high, and organizations that make occasional lobbying communications or spend little money on lobbying the state government will not trigger disclosure under state law.

The CPRA is governed by three different government agencies: the Fair Political Practices Commission (FPPC), the California Secretary of State's Political Reform Division, and the Franchise Tax Board (FTB). The FPPC is the agency charged with the primary responsibility for overseeing compliance with the state's lobbying laws. The FPPC *interprets* and *enforces* the state's lobbying disclosure laws, which means the same agency that you go to ask for advice on a particular issue is also the agency that can file an enforcement action against you if you are found to have violated the law. The FPPC interprets the CPRA by adopting regulations, issuing advisory opinions and advice letters, drafting practice manuals, and offering free technical assistance by phone and e-mail.

1 Gov. Code Section 82047.

The FPPC enforces the law by initiating investigations itself and responding to complaints filed by members of the public. In our review of enforcement actions, less than 5% of all enforcement actions for violations of the CPRA were for violation of the state's lobbying disclosure laws, and most of these were for organizations who failed to file lobby reports for several years in a row. In 2011, the FPPC initiated several enforcement actions against organizations that had hired a lobbying firm, but failed to file the required lobbyist employer reports.[2] Because the FPPC is responsible for enforcing the CPRA, organizations contacting the FPPC for assistance must remember that facts provided to the FPPC are not provided in confidence, and there is nothing that prohibits the FPPC from using facts relating to past conduct for initiating an investigation.

Voices of businesses are therefore well represented at the policy-making table.

All lobbying reports and statements are filed electronically with the California Secretary of State's Political Reform Division. The Secretary of State is responsible for conducting a preliminary review of lobbying documents to determine if the reports were filed on time (and imposes and collects fines for late filings) and reviews the reports to determine if they were correctly filed (e.g., to ensure the math was done correctly, that it was signed, and that it otherwise appears to comply with the law). Additionally, if an organization fails to file a required report, the Secretary of State is required to notify the organization of its failure to file.

Another important function of the Secretary of State is to prepare and maintain an online directory of state lobbyists.[3] This directory breaks out the total number of organizations and individuals who have registered to lobby in California divided by industry. From this directory, we know that during the 2009-2010 legislative cycle, 2,752 entities (including nonprofit and for-profit entities) in California were registered to lobby, and, of those, more than a quarter of these organizations were in the oil and gas, retail, manufacturing, industrial, financial, or insurance industries.[4] The voices of businesses are therefore well represented at the policy-making table. However, the voices of the poor and homeless, immigrant populations, the LGBT community, the reproductive justice community, the environmental community, and others fighting for social and economic justice are not as heavily represented in this list.

The FTB, the state agency that audits tax returns filed by individuals and businesses in California, is also responsible for auditing lobbying organizations.[5] Every two years, at the end of each two-year legislative cycle, the FPPC selects organizations at random to be audited by the FTB. Approximately 25% of all organizations registered to lobby in California are selected for audit every two years. More information on FTB audits is discussed in Chapter 3, Section 1(C), page 38 of this publication.

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2 The organizations fined by the FPPC had been told by their lobbying firm that the firm would take care of filing the required forms for the organization. More on the obligations to file by lobbying firms and lobbyist employers is discussed in Chapter 2, Section 3(B), page 30.

3 Go to www.sos.ca.gov/prd/Lobbying_Directory.pdf to see a copy of this directory.

4 The Secretary of State's directory does not separately track the number of grassroots or nonprofits organizations with a registered lobbyist.

5 The FTB is also responsible for promulgation of all of the tax forms, tax information, and assistance and the collection of all state tax returns and a variety of other activities unrelated to the lobbying rules discussed in this publication. For more information on these rules, please visit www.ftb.ca.gov.

2. Comparing the CPRA to Federal Tax Law

The FPPC is diligent in its efforts to offer resources that help to interpret the CPRA. However, because the CPRA was not drafted with nonprofit organizations in mind, often portions of the law cannot be harmonized with IRS limitations on nonprofit lobbying.

Not all organizations that engage in lobbying activities in California will have to file lobbying disclosure reports. In order to trigger registration and reporting requirements, the organization must engage in a certain amount of lobbying as defined under the CPRA. Organizations that lobby in California but do not meet the thresholds for registration and reporting discussed in this publication will not have reporting obligations with the California Secretary of State. Even if an organization does not trigger reports under California's lobbying disclosure law, however, the organization will still need to disclose its lobbying on the organization's annual Form 990 filed with the IRS.[6] For more information on disclosing your organization's lobbying expenses on its Form 990, see AFJ's publication, "*Being a Player*."

Even if a nonprofit is complying with its federal tax law limits on lobbying, it must still also follow California rules.

It is important to note the definitions of lobbying under the CPRA are not the same as the definitions of lobbying that apply to 501(c)(3) organizations under federal tax law. As a result, public charities need to be aware of *both* state law and federal tax law, along with the similarities and differences between their definitions of lobbying, because activity may be considered lobbying under one but not the other. Even if a nonprofit is complying with its federal tax law limits on lobbying, it must still also follow California rules when lobbying in California. As a corollary, even if a nonprofit is complying with all California reporting rules, it must still be sure not to exceed federal tax law limits. The California lobbying disclosure rules were not designed to focus specifically on the activities of nonprofits, but rather are intended to cover any person or group spending money to influence state-level legislative or administrative action.

3. Lobbying in Cities, Counties, and Special Districts in California

The CPRA does not regulate lobbying in California's cities, counties, or special districts. However, certain cities, counties, and special districts (including a select number of school districts, airport authorities, and transportation authorities) have separate laws regulating lobbying activities in their respective jurisdictions. We discuss the scope of these local rules in our factsheet, *California City, County and Special District Local Lobby Ordinances*.

4. Ballot Measures

As you may know, the IRS treats ballot measures, constitutional amendments, referenda, bond measures, and initiative activity as lobbying since the measures are legislative proposals that are submitted for approval by the voters. However, ballot measures are not governed as lobbying activities by California law. Instead, an organization's efforts to influence ballot measure elections will be governed by California's campaign finance laws. More information on California's ballot measure disclosure laws can be found on our website at http://bolderadvocacy.org/navigate-the-rules/state-resources.

6 Unless the organization files using the Form 990-N, which does not require the disclosure of lobbying. However, organizations that file using this form must still track lobbying expenses.

5. Lobbying by Other Tax-Exempt Organizations

It is worth pointing out that other tax-exempt organizations, such as 501(c)(4) social welfare organizations, 501(c)(5) labor unions, and 501(c)(6) trade associations, are not subject to the same limits by the IRS. Instead, such an organization may conduct unlimited lobbying without jeopardizing its tax-exempt status so long as the lobbying pertains to the purpose for which it was formed. Since lobbying may be the organization's sole activity, we do not address the lobbying rules for 501(c)(4)s specifically in this publication.[7] However, it is important to understand that the California lobbying disclosure rules apply to both 501(c)(3)s and to other tax-exempt organizations. In fact, there is no difference in how the law applies to different tax-exempt organizations.

7 We address the rules for filing by 501(c)(3)s with affiliated 501(c)(4) organizations in Chapter 3, Section 3(B), page 47 of this publication.

Chapter 2: Thresholds For Filing Lobbying Reports

1. Introduction

California's lobbying disclosure law sets fairly high thresholds for registering and reporting as a lobbyist. As such, not every organization that works to influence state legislation or state regulations will need to register as a lobbyist and file lobbying reports. For example, you might not need to file lobbying reports if during a particular quarter your organization will attend a state lobby day in Sacramento sponsored by one of your statewide coalition partners, you send a few action alert emails on state legislative matters, you testify before a state regulatory agency, or you meet with your local legislators in order to introduce them to your clients or constituents. The laws are designed to require disclosure only by organizations with fairly significant contacts and influence.

California's lobbying disclosure law sets fairly high thresholds [for registration and reporting].

Organizations that lobby in California but do not meet the thresholds for registration and reporting do not need to comply with the California state registration and reporting requirements set out in this publication.

California's lobbying disclosure law creates two different categories of reporting requirements. Not surprisingly, the type of registration and reporting triggered by the organization (if any) will depend upon how actively the organization lobbies the California state government. If an organization triggers reporting, it will report in one of the two categories and will *never* report under both categories. The first category of reporting is called "$5,000 filer reporting," which requires an organization to file reports only in quarters in which the organization is particularly active, and no registration is required. The second category of reporting is called "lobbyist employer reporting," which requires the organization to register as a lobbyist employer and file reports at the end of each calendar quarter. The thresholds for each of these reporting categories are outlined below.

	Lobbyist Employer	$5,000 Filer
Registration required when?	Registration is required when the organization has someone who has qualified as a lobbyist either on staff, as a consultant, or if it hires a lobbying firm.	No registration is required.
Reporting required when?	Once registered, organization and its registered lobbyist must continue to file reports every quarter.	Organization spends $5,000 or more on its state-level lobbying activities during a calendar quarter. Organization *only* files reports in quarters when it spends at least $5,000 on lobbying activities.
Additional obligations for employees or consultants?	Yes.	No.

It is much more likely your organization will trigger reporting as a $5,000 filer than as a lobbyist employer, so we will first address the filing obligations associated with being a $5,000 filer.

Lobby Reporting by Fiscal Sponsors
Many nonprofit organizations act as a fiscal sponsor and provide administrative support to other nonprofits organizations. Fiscal sponsorship arrangements come in many different forms. Although the FPPC has not addressed all types of fiscal sponsorship arrangements, the Commission has clarified that simply providing administrative services to another project will not require the sponsoring organization to register or report on behalf of its project(s). Instead, the project must file lobby disclosure reports in its own name.[8]

2. "$5,000 Filer" Reporting

$5,000 filer reports are not filed on an ongoing basis.

Many nonprofit organizations qualify as a $5,000 filer, which means they must file a one-time $5,000 filer report in any calendar quarter in which they spend $5,000 or more on California state-level lobbying. The reports are filed at the end of the calendar quarter pursuant to the filing schedule discussed in Chapter 3, Section 1(E), page 40. California state-level lobbying consists of attempts to influence legislative or administrative decisions through communicating with legislators or administrative officials or soliciting or urging the public to make such communications. These $5,000 filer reports are not filed on an on-going basis. They are instead filed only when the organization spends $5,000 or more in the quarter to influence state-level legislative or administrative actions.[9] Additionally, organizations that file as $5,000 filers do not have someone who is considered their "lobbyist."

Who Is Not a $5,000 Filer?
(1) Any organization that meets the definition of a lobbyist employer. Your organization will never be both a $5,000 filer and a lobbyist employer, so your organization should review the lobbyist employer thresholds discussed below to see if you should file lobbyist employer reports instead.
(2) Any organization that does not spend $5,000 or more in a calendar quarter to influence state-level legislative or administrative actions.
(3) Any organization that's only expenditures during the calendar quarter were for gifts or activity expenses (as discussed in Chapter 2, Section 2(F), page 13).

In determining whether an organization qualifies as a $5,000 filer in a given quarter, the organization should add up its state-level lobbying expenses for that quarter. However, only certain expenses count toward this $5,000 threshold. In general, any cost that would not have been incurred but for the organization's state-level lobbying efforts should be included. The most common expenses include staff time, travel expenses, grassroots lobbying expenses, payments to lobbying coalitions, and activity expenses. Each of these expenses is discussed in detail below.

(A) Staff time: In determining the cost of staff time, you will count the compensation for an employee engaged in direct lobbying or grassroots lobbying *only* if the employee spends 10% or more of her time on direct lobbying or grassroots lobbying in a calendar month. In other words, an organization can exclude staff compensation of any staff members that spend less than 10% of their compensated time on lobbying activities.[10] If the employee spends 10% or more of his compensated time on direct or grassroots lobbying in a calendar month, the organization will only count the portion of the employee's compensation that is attributable to lobbying. For example, if the employee spends 15% of her time in a particular month on lobbying, then the organization would include 15% of that employee's compensation in the $5,000

8 Levikow Advice Letter, FPPC No. A-04-086. All FPPC Advice Letters referenced in this publication are available on the FPPC's Website for free at www.fppc.ca.gov.

9 Government Code section 86115(b); 2 Cal. Code of Regulations 18616.

10 2 Cal. Code of Regulations 18615(c)(4)(A).

calculation. To determine whether an employee has spent 10% of his time in a calendar month on direct or grassroots lobbying, the organization needs to implement a reasonable tracking and recordkeeping system and train its staff on tracking time spent on direct and grassroots lobbying.

If an employee of the organization is requested to appear as a witness at a hearing of a subcommittee of the California State Assembly, and the employee must fly from Los Angeles to Sacramento to present her testimony, the employee would count as lobbying the time preparing to give her testimony, the time spent traveling to and from Sacramento to present her testimony, the time waiting in the committee room to offer her testimony, and the time actually giving her testimony.

(B) Direct Lobbying:

California law regulates certain direct and grassroots lobbying activities.

What Is Direct Lobbying?
To count as direct lobbying, your activity must have the following four elements: (1) a communication (2) with a qualifying official (3) for the primary purpose of influencing (4) a state-level legislative or administrative action.

California law regulates certain direct and grassroots lobbying activities. It does not, however, provide a formal definition of "lobbying." The term is a common expression used to describe what California law calls "influencing legislative or administrative action." Despite the lack of a formal definition, to count as direct lobbying your activity must have the following four elements: (1) a communication (2) with a qualifying official (3) for the primary purpose of influencing (4) a state-level legislative or administrative action. See Chapter 2, Section 2(D), page 10 for the definition of grassroots lobbying.

It is important to note that the definition of direct lobbying under California law does not mirror the IRS definition of lobbying. (See Charts 1, 2 & 3 for a comparison of these differences.) The following summary is compiled from various CPRA sections, FPPC regulations, and advice letters.

(1) Communication

Any communication, including preparation work to support a direct communication, is covered. (See definition of "direct communication" in Chapter 2, Section 3(A)(3), page 17 below.) This term may include conducting studies, researching, writing correspondence, developing testimony, attending meetings, and participating in phone calls.

(2) Qualifying Official[11]

Officials covered by the state lobby disclosure laws include the California Governor, Lieutenant Governor, Attorney General, Insurance Commissioner, Controller, Secretary of State, Treasurer, Superintendent of Public Instruction, Members of the Legislature, members elected to the California Board of Administration of the Public Employees' Retirement System, and members of the

11 2 Cal. Code of Regulations 18616(a)(4)(B). Note this regulation does not actually use the term "qualifying official" (as defined in 2 Cal. Code of Regulation 18239(d)(5)), however, when you compare the two terms, there is very little difference between the definitions provided in each regulation. As such, we use the term here for sake of ease.

California State Board of Equalization[12], as well as appointed, elected, or statutory members or directors of state agencies,[13] (e.g., the Director of CalTrans, the members of the California Air Resources Board) and a state office, department, division, bureau, board, or commission. Staff members and consultants of these officials are included as well, excluding receptionists and other clerical staff.[14]

Are California Public Utilities Commissioners Qualifying Officials?

The California Lobbying Disclosure law does not treat communications with the California Public Utilities Commission (CPUC) in the same way it treats communications with other agencies. Businesses and organizations appearing before the CPUC lobbied to exclude a broad range of communications and payments with the CPUC from the scope of the California Lobbying Disclosure Law. As such, only a limited range of activities before the CPUC need to be disclosed.[15]

The CPUC is the only agency that is not covered under the standard lobbying disclosure laws. Organizations lobbying the CPUC should refer to the FPPC's *Lobbying Information Manual* for more information on these rules.

The communication need not be biased in support of, or opposition to, a particular legislative or administrative action.

Local or federal officials, such as city council members, county supervisors, or US Congress members, are *not* included. Questions often arise about boards and commissions that are made up of state, federal, and/or local officials. For example, the California Bay-Delta Authority is comprised of state and federal agency representatives, public members, and legislators. Since this Authority is housed under the California Natural Resources Agency, the FPPC treats this multi-jurisdictional agency as a state agency.[16]

(3) For the Purpose of Influencing

The communication must be made for the primary purpose of influencing. Not every communication with a qualifying official will be deemed to be for the purpose of influencing state legislative or administrative action. However, this term has historically been defined quite broadly by the FPPC to include "promoting, supporting, influencing, modifying, opposing or delaying a legislative or administrative action by any means and can include providing or using information, statistics, studies or analyses."[17] The communication need not be biased in support of, or opposition to, a particular legislative or administrative action, nor does it need to advocate for any particular outcome in order to fall within this definition.[18] For example, a communication with a legislative staff member that provides a written legal assessment of a bill that includes a suggestion for correcting ambiguities in the legislative language would be considered for the purpose of influencing a legislative action, even if the assessments are intended to be neutral and nonpartisan and do not take a supporting or opposing position.[19]

12 Gov. Code Sections 82039, 82024.

13 Gov. Code Sections 82039, 82004.

14 Gov. Code Sections 82039, 82004.

15 Please consult the FPPC lobbying Information Manual online at www.fppc.ca.gov.

16 Winternitz Advice Letter, FPPC No. I-08-201.

17 Gov. Code Section 82032.

18 Although not relevant here in the context of determining whether the organization is a $5,000 filer, it is helpful to point out the term. The purpose of influencing also includes activities done in support or assistance of a lobbyist (2 Cal. Code of Regs. 18616(a)(4)(A)). For additional discussion of this, see Chapter 2, Section 3(C)(3), page 33.

19 Kelso Advice Letter, FPPC No. A-97-151.

What Types of Activities Are Considered "Influencing?"
This term includes "promoting, supporting, influencing, modifying, opposing or delaying a legislative or administrative action by any means and can include providing or using information, statistics, studies or analyses."

Examples of activities that fall outside the definition of "for the purpose of influencing" include merely inquiring about a legislator's position on pending or potential legislation, without any further discussion,[20] or having an informational meeting with state agency officials to determine the agency's viewpoint on a general subject matter, without discussing or suggesting or requesting that the agency consider drafting, specific rules, or regulations.[21]

(4) Legislative or Administrative Action

Legislative action is not limited to votes by a committee or legislative body on a specific bill.

The term "legislative action" is not limited to votes by a committee or the full legislative body on a specific bill. Instead, it more broadly includes the drafting, introduction, consideration, modification, enactment, or defeat of any bill, resolution, amendment, report, nomination, or other matter by the state senate or assembly, or any of their committees or individual members or employees. It also includes the governor's approval or veto of any bill.

It does not include, however, every action of the legislature or a legislator. For example, a state senator's selection of a commercial service for mailing newsletters and questionnaires to her constituents under a program established by official senate rules is not considered legislative action.

The term legislative action includes a proposal by the legislature to place a measure on the ballot. For example, in 2010, Assemblymembers Gatto and Niello authored legislation to place a constitutional amendment on the ballot to require the state set to aside a rainy day fund. Efforts to influence whether the legislature should or should not have placed this measure on the ballot would be considered efforts to influence a specific legislative action.[22]

Note that this term does not generally include ballot measure advocacy. As such, legislative action is not broad enough to include ballot initiatives, constitutional amendments, referenda, or other measures once they have already qualified for the ballot or that are placed on the ballot through the initiative process.

For additional examples of the types of decisions covered by California's lobbying disclosure law, see Chart 3.

By comparison, the term "administrative action" covers the proposal of, drafting, development, consideration, amendment, enactment, or defeat by any state agency of a rule, regulation, or other action in a ratemaking or quasi-legislative

20 Leidigh Advice Letter, FPPC No. A-89-247.

21 Bagatelos Advice Letter, FPPC No. I-91-202.

22 Cohen Opinion, 1 FPPC Ops. 10, 75-006.

proceeding. It includes such actions as the addition or removal by the California Department of Fish and Game of an animal from the state's endangered species list[23] and the Office of Administrative Law's review of another state agency's regulations under the state's normal rule-making process.[24]

Examples of actions that fall outside the definition include:

- A proceeding to award a specific grant or contract, such as through a Request for Proposals (RFP) bidding process.[25]
- A proceeding involving the issuance, amendment, or revocation of a permit or license, such as California Public Utilities Commission proceedings to determine whether to approve a railroad company's or airport's application to discontinue or add a particular service route.[26]
- Overseeing a state agency's laboratory services by coordinating operations, ensuring quality control, supervising personnel, and preparing budgets.[27]
- The issuance of a legal opinion by a state agency.
- A proceeding to enforce compliance with existing law or to impose sanctions for violations of existing law.

For additional examples of the types of decisions covered by California's lobbying disclosure law, see Chart 3.

Costs for grassroots lobbying campaigns, including expenditures for coordinating a volunteer lobby day, are included.

(C) Travel expenses: Regardless of whether the individual spends 10% or more of compensated time on lobbying, all travel and expenses incurred in connection with an employee's lobbying activities must be counted. If an employee travels for more than one purpose (e.g., to engage in state lobbying activities, to attend a statewide conference), the costs may be allocated based on the relative time spent in those activities. Only those costs allocable to the lobbying activities are reportable.[28]

(D) Grassroots lobbying expenditures: Costs for grassroots lobbying campaigns, including expenditures for coordinating a volunteer lobby day, are included.[29]

What Is Grassroots Lobbying?
Under California law, grassroots lobbying occurs when (1) soliciting or urging (2) members of the public (3) to enter into direct communication (4) with a qualifying official (5) for the *primary* purpose of influencing (6) a legislative or administrative action.

Under California law, your organization engages in grassroots lobbying when (1) soliciting or urging (2) members of the public (3) to enter into direct communication (4) with a qualifying official (5) for the primary purpose of influencing (6) a legislative or administrative action.

23 Sutton Advice Letter, FPPC No. A-95-282.
24 Roberts Advice letter, FPPC No. I-96-220.
25 Franchetti Advice Letter, FPPC No. I-91-301, 1991 Cal. Fair-Pract. LEXIS 235.
26 Evans Opinion, 4 FPPC Ops. 84, 78-008-B.
27 Wallace Opinion, 1 FPPC Ops. 118, 75-087.
28 FPPC *Lobbying Information Manual* (www.fppc.ca.gov/manuals/7-05lobbymanual.pdf), page 1–8.
29 2 Cal. Code of Regulations 18615.

Grassroots Lobbying Communications Made 45 Days before an Election

Any organization that spends or promises to pay $50,000 or more for a communication distributed within 45 days of an election may need to file a special one-time report to disclose this payment. A report is only required if the communication clearly identifies a candidate for state elective office but does not expressly advocate the election or defeat of that candidate. For example, if an organization focused on education posted a series of billboards in Sacramento that reference Sacramento Senator Darrell Steinberg with, "Senator Darrell Steinberg, please stand up for California's school children," assuming they spent $60,000 on these billboards and posted them within the 45-day period before the primary or general election, the organization would need to file a report disclosing this payment. The report must be filed within 48 hours of the payment's being made or promised. The Secretary of State has developed an online report, Form E-530, for this purpose. Refer to the Secretary of State's Political Reform Division Website, located at www.ss.ca.gov, or call (916) 653-6224.

Communication must solicit or urge the public to enter into a direct communication.

(1) Soliciting or Urging

"Soliciting or urging" means to request or suggest a direct communication by any means, including through mailings, advertisements, social media, and phone calls.[30] This includes, for example, paying for newspaper ads urging readers to contact their local assemblymember on a pending bill.[31]

(2) Members of the Public

An activity must be directed at the general public to qualify as grassroots lobbying. Direct mailings, billboards, broadcast advertisements, newspaper advertisements, and social media communications are considered to be communication to the general public. Under some circumstances the organization's employees, members, other affiliated persons, donors, or individuals who request or purchase an organization's newsletter are excluded from the definition of members of the general public.[32]

(3) Direct Communication

The communication must solicit or urge the public to enter into a direct communication. The term "direct communication" is more fully defined on Chapter 2, Section 3(A)(4), page 17. However, for the purpose of defining grassroots lobbying, it includes soliciting or urging the general public to provide oral or written testimony, draft letters or emails, make phone calls, attend in-person meetings, and create reports.

(4) With a Qualifying Official

A qualifying official includes anyone elected to a statewide office, legislators and their staff, and staff, board members, commissioners, and consultants of state agencies. This term is more fully defined in Chapter 2, Section 2(B)(2), page 7.

30 Sutton Advice Letter, FPPC No. I-99-093.

31 The FPPC has never defined specifically what it means to "solicit" or "urge." As such, we do not know how closely this term is aligned with the term "call to action" under Section 501(h) of the Internal Revenue Code. However, we think it is likely this term may be somewhat broader.

32 Costa Advice Letter, FPPC No. I-91-469.

(5) For the Purpose of Influencing

An activity is done for the purpose of influencing when you are promoting, supporting, influencing, modifying, opposing, or delaying a legislative or administrative action by any means and can include providing or using information, statistics, studies, and analyses. To our knowledge, the FPPC has never defined when a communication is "primarily" for the purpose of influencing. However, we assume that if you develop a communication for another purpose, and later use that resource for a grassroots lobbying effort, you would not need to count it here. For more information on the definition of "for the purpose of influencing," see Chapter 2, Section 2(B)(3), page 8.

Working in a lobbying coalition can actually be beneficial to your organization.

(6) Legislative or Administrative Action

The term "legislative action" includes any bill, resolution, amendment, report, nomination, or other matter by the state senate or assembly or any of their committees or individual members or employees. It also includes the governor's approval or veto of any bill.

By comparison, the term "administrative action" includes any state agency rule, regulation, or other action in a ratemaking or quasi-legislative proceeding.

These terms are more fully defined in Chapter 2, Section 2(B)(4), page 9.

Other Payments to Influence
In the event that the organization must file a $5,000 filer report, the good news is that all of the payments discussed above will be reported as a lump sum figure on one line of the report. This lump sum figure is referred to as "other payments to influence." We describe the term in more detail in Chapter 3, Section 2(B)(4), page 42 of this publication.

(E) Payments to a Lobbying Coalition: Contributions to a lobbying coalition would count toward the $5,000 threshold. A lobbying coalition is any group of ten or more individuals, entities, or organizations formed primarily to lobby *when* the group members make payments to the group to share the expenses of employing a lobbyist or hiring a lobbying firm.[33] Working as part of a lobbying coalition can actually be beneficial to your organization because, so long as your organization's only lobbying activity is making payments to the coalition, it will *not* be considered a lobbyist employer and will not individually need to file reports on a quarterly basis. Instead, the lobbying coalition registers and files reports on behalf of its members.

What Is a Lobbying Coalition?
A lobbying coalition is any group of ten or more individuals, entities, or organizations formed primarily to lobby *when* the group members make payments to the group to share the expenses of employing a lobbyist or hiring a lobbying firm.

Note that if the provisions discussed above are not met (e.g., the group has fewer than ten members, the organization makes payments for a lobbyist or lobbying firm apart from the coalition), the organization may still be considered a lobbyist employer if it meets the pertinent thresholds. (See definition of "lobbyist employer" in Chapter 2, Section 3, page 15.) Additionally, organizations that otherwise meet the definition of "lobbyist employer" will still need to comply with the obligations of a lobbyist

33 2 Cal. Code of Regulations 18616.4

employer and will disclose the payments made to the lobbying coalition on its Lobbyist employer forms.

Very few groups that work together on lobbying activities will meet the definition of a lobbying coalition. One reason for this is that bona fide, on-going trade, labor, or membership organizations whose membership services extend beyond lobbying are not considered lobbying coalitions. For example, a membership organization that serves businesses by providing general consulting services and information to increase profitability in addition to employing a lobbyist is not a lobbying coalition.[34] For this reason, associations such as the California Association of Nonprofits are not lobbying coalitions.

By contrast, a group of nonprofits and corporations in a particular industry that exists solely for the purpose of monitoring the regulatory activities of state agencies and notifying individuals in the industry about those activities, without collecting member dues *or* providing any other services to its members, is considered a lobbying coalition when it employs a lobbyist.[35] Some examples of lobbying coalitions include the Major Builders Council (a coalition of developers), the Clean Fleets Coalition, and the California Groundwater Coalition. Just because an organization has the word "coalition" in its title, it does not mean it is a lobbying coalition. For example, the Coalition for Clean Air and the California Bicycle Coalition are not lobbying coalitions.

The term "activity expense" and "gift" are not synonymous, but they are similar concepts.

Example 1: If your organization pays membership dues to a nonprofit that you know has a lobbyist in Sacramento, you will not be a part of a lobbying coalition if the organization you pay dues to provides some other services or activities to your organization beyond just hiring a lobbyist.

Example 2: If your organization pays $1,000 every quarter to a registered lobbying coalition, and you do not otherwise have any lobbying expenses during the quarter, the organization will not need to file a $5,000 filer report, since the organization did not spend $5,000 or more during the calendar quarter.

Tracking Payments to Lobbying Coalitions
In Chapter 3 we discuss the fact that both the organization paying $5,000 or more into a lobbying coalition, as well as the coalition itself, must report separately report payments made to the lobbying coalition. As such, it may be helpful for your organization to keep clear records about payments made to lobbying coalitions.

(F) Activity Expenses: You must also include payments for activity expenses. The terms "activity expense" and "gift" are not synonymous, but they are similar concepts and are easily confused. Activity expenses are payments or expenses made or incurred by a $5,000 filer (as well as a lobbyist, lobbying firm, or lobbyist employer) that benefit any qualifying officials (defined in Chapter 2, Section 2(B)(2), page 7), including any person who is a candidate for an elective state office, or any person who has been elected to office but has not yet taken office, or the spouse or a dependent child of any of the above.

34 Gass Advice Letter, FPPC No. A-91-540.

35 Hansen Advice Letter, FPPC No. A-95-088.

Tracking Activity Expenses

As you will see in Chapter 3, your organization must separately disclose payments for activity expenses. As such, it may be helpful for your organization to keep clear records about payments made to and incurred for activity expenses and the qualifying officials or candidates for office who will benefit from the payments. For more on keeping track of activity expenses, see Chapter 3, Section 2(B)(2), page 41.

Gifts are the most common type of activity expense. Others include consulting fees, salaries, and other forms of compensation. Campaign contributions, however, are not activity expenses. Note that an expense does not need to be connected to actual lobbying activity to qualify as an activity expense. For example, if a $5,000 filer employs the spouse of an assembly staffer, the salary paid to the spouse qualifies as an activity expense even if the spouse does not engage in any lobbying activities.

Activity expenses are counted only in quarters when the organization makes other lobbying payments.

For example, if your organization takes a legislator and his staff member to lunch to talk about a bill and pays for the cost of the lunch, the total cost of the lunch would need to be factored into this $5,000 figure.

What Is a Gift?

Although nonprofit organizations may not have the funding to give extravagant benefits to public officials, nonprofits may provide them with more modest "gifts" from time to time. A gift is anything of value, whether money, goods, or services, that confers a personal benefit on a public official, when equal or greater consideration is not provided to the donor. Common gifts include payments for food, beverages, entertainment, and travel. There are several exceptions to what counts as a gift, such as something given for informational material or benefits provided in connection with a speech given by the recipient.

Note that the gift rules under California law can actually apply equally to both state and local elected officials as well as other appointed officials and government employees. In this publication we primarily address gifts to state-level qualifying officials. The rules regarding gifts, including exceptions, valuation, reporting, and notifications, are complex. While a full discussion of these rules is beyond the scope of this publication, more information about gift limits and exceptions is available in Chapter 4, Section 5, page 56.[36]

These payments by nonprofits most commonly occur when organizations host receptions or similar events to which qualifying officials are invited and when groups serve food or provide goodie bags or other types of take-away, non-educational materials to officials, their staff, or immediate family members.

Note that activity expense payments are counted only in quarters when the organization makes other lobbying payments. As such, even if your organization makes gifts totaling $5,000 for the quarter, you will not need to file a $5,000 filer report for the quarter *if* this were your only lobbying expense for the quarter.

Additionally, any payment described above may be considered an activity expense if it is arranged by a lobbyist or lobbying firm, even if your organization does not have its own lobbyist or lobbying firm. A payment is "arranged" if a lobbyist or lobbying firm:

- Delivers a gift to the recipient; or
- Acts as the representative of the donor, if the donor is not present when the gift is made, as when an organization and its lobbyist host a dinner with a legislator and no employee of the organization can attend the dinner; or
- Invites or sends an invitation to the recipient; or

36 Government Code section 82028 and 2 Cal. Code Regulations 18940-18950.4.

- Is listed as the point of contact for an event or solicits responses from an intended recipient concerning her attendance or nonattendance at the occasion of a gift, as when the lobbyist or lobbying firm collects RSVPs for an event; or
- Advances funds for the activity expense, even if the lobbyist or lobbying firm is later reimbursed.

3. Lobbyist Employer Registration and Reporting

An organization can become a lobbyist employer with the attendant registration and reporting obligations in three ways: by having an in-house employee who qualifies as an in-house lobbyist, by hiring an individual contractor or consultant who qualifies as a contract lobbyist, or by hiring a lobbying firm for the purpose of attempting to influence state legislative or administrative action. Under the law, simply by virtue of hiring an in-house lobbyist, contract lobbyist, or a lobbying firm, the organization will itself need to file lobbying disclosure forms.

Under the law, simply by virtue of hiring an in-house lobbyist, contract lobbyist, or a lobbying firm, the organization will itself need to file lobbying disclosure forms.

When Does Your Organization Become a Lobbyist Employer?	
If your organization has an in-house employee who is considered an in-house lobbyist	An in-house employee is considered a lobbyist when he (1) spends one third or more (2) of his compensated time (3) in a calendar month (4) engaging in direct communication (5) with a qualifying official (6) for the purpose of influencing (7) one or more state legislative or administrative actions.
If your organization hires a contract lobbyist	A contractor is considered a lobbyist when she is (1) an individual consultant or contractor (2) who receives or becomes entitled to receive $2,000 or more in a calendar month for making direct communication (3) to a qualifying official (4) for the purpose of influencing (5) state legislative or administrative action.
If your organization hires a lobbying firm	A consulting firm or other business entity is a lobbying firm if it (1) will receive or become entitled to receive $5,000 or more in any calendar quarter from your organization alone or from a number of organizations (2) for the purpose of influencing state legislative or administrative action, and (3) an employee, owner or officer of that business entity engages in direct communication with a qualifying official for the purpose of influencing state legislative or administrative action.

If a nonprofit has an in-house employee or consultant who meets the definition of a lobbyist or lobbying firm and it authorizes the individual or firm to make direct communications on its behalf, the organization will automatically become a lobbyist employer and be required to file quarterly reports as long as it has an active in-house or contract lobbyist or lobbying firm. In other words, simply by virtue of hiring a lobbyist or lobbying firm, the organization will itself need to file lobbying disclosure forms.[37]

When Are You Not a Lobbyist Employer?
If your nonprofit hires a lobbyist or lobbying firm as part of a coalition of ten or more individuals or organizations, your organization is not a lobbyist employer. (See Chapter 2, Section 2(E), page 12 for a definition of a lobbying coalition.) In addition, a nonprofit that hires a lobbying firm for the sole purpose of monitoring and/or drafting legislation (i.e., without authorizing or directing the firm to engage in direct communication regarding the legislation) will not be considered a lobbyist employer.[38]

37 Before hiring a new consultant or consulting firm, it may be useful to inquire whether the organization is currently registered as a lobbyist or lobbying firm, to determine whether hiring this consultant or firm will impact your organization's obligations to file reports.

38 Government Code Section 82039.5; 2 Cal. Code of Regulations 18239.5.

(A) In-House Lobbyist

An in-house employee[39] is considered a lobbyist when he (1) spends one third or more (2) of his compensated time (3) in a calendar month (4) engaging in direct communication (5) with a qualifying official (6) for the purpose of influencing (7) one or more state legislative or administrative actions. Each individual employee who meets this threshold triggers the requirement to register and file reports as an in-house lobbyist for the organization. In order to be required to register, all seven elements must be met.

Why You Might Not Have an In-House Lobbyist

Most nonprofit employees who engage in lobbying activities in California will not necessarily be considered a lobbyist. As you will see in this section, the threshold for qualifying as a lobbyist is quite high since the law recognizes that it would be unfair to require individuals who have only occasional or infrequent lobbying contacts to comply with the registration and reporting requirements and other lobbyist restrictions.

In-house employees of a nonprofit organization who spend a significant amount of time making direct communications may need to register as a lobbyist.[40]

The employee must spend at least one third of her compensated time in a calendar month making direct communications.

We will walk through each of these elements separately.

(1) One-Third (Time)

The employee of the organization must spend at least one third of her compensated time in a calendar month engaging in direct communication. To determine whether an employee has spent this one-third time, the organization needs to implement a reasonable tracking and recordkeeping system and train its staff on tracking time spent on direct communication. For organizations that currently use a timesheet to track employee hours, it may make sense to incorporate a column or section for noting time spent on direct communication. Although this may seem obvious, this one third of the employee's time must be spent by an individual employee (i.e., you do not add together the salaries of multiple employees in calculating this time).

(2) Compensated Time

The next requirement is that the time be "compensated." This means the organization can exclude time spent by volunteers of the organization as well as time spent by employees of the organization that is truly done on a volunteer basis. Time is not considered "volunteer time" of its employees if the organization requests or suggests the employee participate in the direct communication if it is within the employee's job description or if the organization ratifies the employee's participation in the activity by allowing time off for the activity.

39 The law also covers officers of a nonprofit organization, including the organization's president or chair of the board, secretary, chief financial officer, and any other person expressly listed as an officer in the organization's bylaws or other corporate records. We address here only the compensated time of employees of nonprofit organizations because typically officers of the organization are not compensated unless they also serve as an employee of the organization.

40 Government Code Section 82039 and 2 Cal. Code of Regulations 18239.

(3) Calendar Month

This one-third time is evaluated on a calendar month basis. If at the end of a calendar month the employee has not spent the required one third of his time, then the employee will not trigger lobbyist registration requirements at that point. If an organization wants its employees to stay under the registration thresholds, then maintaining a reasonable recordkeeping system as described in Chapter 3 will allow the organization to allocate tasks between staff members to avoid having any individual employee reach the one-third time in a calendar month threshold. If an employee meets the one-third time threshold in one calendar month, he is required to register as an in-house lobbyist, regardless of whether that employee will meet the test in subsequent months. The employee would stay registered until he meets the thresholds for termination discussed in Chapter 3, Section 7, page 55.

What If Multiple Organizations Jointly Hire a Lobbyist?

In tight budget times, organizations are getting more creative about financing their lobbying activities. Nonprofit organizations often pool resources in order to hire a lobbyist. Whenever this happens, the organization should contact the FPPC for advice on how the facts of their particular arrangement might impact the reporting.

It is important to note that when more than one nonprofit organization hires a lobbyist to develop a joint legislative program, in which the organizations would share the expenses of the program, it may (under some circumstances) result in an employee or consultant of the nonprofit's becoming a lobbying firm (discussed in Chapter 2, Section 3(C), page 32). This would come about if, for example, one organization were reimbursed by one or more other organizations for their share of the salaries and other expenses of maintaining a lobbyist and legislative office in Sacramento, if the lobbyist(s) represent several organizations jointly and no lobbying activities were undertaken separately, the lobbyist(s) will be directed in all of their activities by joint action of the two organizations and two organizations will not be formally merged into a single entity, the employee may be considered a lobbying firm, and each of the nonprofits would be lobbyist employers. For more information on how to report compensation received from multiple entities, see Chapter 3, Section 6, page 54. For information on reporting by affiliated organizations, see Chapter 3, Section 3(B), page 47.

The definition of direct communication only applies when you are determining whether an employee or consultant of the organization must register as a lobbyist or lobbying firm. Once an employee triggers reporting as a lobbyist or lobbying firm, the employee must then track all staff time spent engaging in direct and grassroots lobbying.

(4) Engaging in Direct Communication

The employee's time must be spent engaging in direct communication with a qualifying official. The definition of "direct communication" is different from that of "direct lobbying" under federal tax law because direct communication is a measure of time spent on delivering communications.

What Is Direct Communication?

Direct communication includes providing oral or written testimony, drafting letters or emails, making phone calls, and attending in-person meetings. It also includes creating reports and attending conferences and briefings. For example, an employee of the organization makes a direct communication when she appears as a witness at a legislative hearing, if she talks to a legislator's staff, if she drafts letters or emails to a committee staff member, or responds to questions or inquiries from any qualifying official. The term covers both communications made directly by the employee as well as communications an employee makes at the direction of her supervisors.[41]

The focus of direct communication is on delivering communications to a qualifying official. Activities in preparation for lobbying communications do not generally count as engaging in a direct communication unless they are part of the communication itself, such as drafting a letter or conducting research for the primary purpose of sending the communication, but these would not include background research on a legislative matter.

41 2 Cal. Code of Regulations 18239(d)(3).

For example, direct communication includes providing oral or written testimony, drafting letters or emails, making phone calls, and attending in-person meetings. In determining whether an employee meets this test, the organization looks at the employee's total time spent making direct communications. Activities in preparation for lobbying communications do not generally count towards meeting this threshold, unless they are part of the communication itself, such as drafting a letter or conducting research for the primary purpose of sending the communication.

Since the employee's time must be spent actually *engaging* in direct communication, the employee does not need to include "support or assistance of lobbyists," or grassroots lobbying efforts in calculating his time.[42]

Although certain activities do not count as direct communications, they may nonetheless be included within the definition of lobbying.

What Is *Not* a Direct Communication?

Five categories of communications that would otherwise seem to meet the definition of a direct communication are specifically excluded from the definition.

Keep in mind that although these activities do not count as direct communication, they may nonetheless be included within the definition of direct lobbying discussed in Chapter 2, Section 2(A), page 6.

Administrative Testimony

Providing oral or written testimony to an administrative agency, if the testimony is provided in the course of an open public hearing and upon which a public record is created. For example, an environmental organization that has an employee testify before the California Environmental Protection Agency on proposed regulations implementing emissions standards would not count this activity or preparation for it as a "direct communication." In the context of the California Public Utilities Commission (CPUC), administrative testimony also includes any communication made at a public hearing, public workshop, or public forum or included in the official record of any proceeding before the CPUC. This exception applies to in-house and contract lobbyists as well as lobbying firms.[43]

Attending a Meeting with Registered Lobbyist

Direct communication does not include attending meetings with the organization's registered lobbyist (in-house or contract) or lobbying firm. This exception applies to any meeting with a registered lobbyist retained by the organization itself or by a membership organization to which the organization belongs. This exception is often referred to as the "accompanying rule exception" because it applies when an employee of the organization accompanies the registered lobbyist to private meetings arranged between the lobbyist and a qualifying official.

Communications Drafted by Purely Support Staff

When a staff person prepares information, documents, or correspondence (none of which will reflect that staff person's name or signature, except perhaps as a reference for additional details) that will be utilized by an in-house or contract lobbyist in lobbying activities, that preparation by the staff person would not be considered direct communication. For example, if the president of the organization dictates a letter to be transcribed by her administrative assistant, the administrative assistant does not make direct communication by transcribing the letter. However, the FPPC recognizes when the "support staff directly communicates with a qualifying official or takes any other overt action for the principal purpose of supporting, promoting, influencing, or advancing legislative or administrative action the scenario might provide for a different outcome."[44] For example, the term direct communication would include a staff assistant's providing additional information about an issue to a qualifying official, if the additional details are communicated directly by the staff member to the qualifying official and if the purpose of the communication is for proposed action or inaction by the official.

42 2 Cal. Code of Regulations 18616(a)(4)(A)-(C).

43 2 Cal. Code of Regulations 18238.5; See also Madden Advice Letter, FPPC No. I-92-504, and Sutton Advice Letter, FPPC No. I-99-093, extending the administrative testimony exception to lobbying firms.

44 FPPC Barber Advice Letter, FPPC No. I-98-146.

What Is *Not* a Direct Communication? (*continued*)

Purely Technical Data to Administrative Agency

The fourth exception applies when the nonprofit organization provides purely technical data to administrative agencies and the nonprofit organization does not otherwise engage in direct communication for the purposes of attempting to influence state legislative or administrative action. Nonprofit organizations often collect technical data about the impact or scope of a proposed regulation (e.g., the number of people who will benefit from the regulation, the number of people impacted by the proposed regulation, the timing of certain activities triggered by a regulation). It is not considered a direct communication for an employee of an organization to provide purely technical data or analysis to an administrative agency if the employee does not otherwise attempt to influence the agency's decisions through the communication.[45] The FPPC further clarifies in an informal advice letter that providing purely technical data under this exception does *not* include providing assessments of legislative proposals that, although intended to be "neutral and nonpartisan," provide suggested amendments to the language of the proposals.[46]

Coordinating Media Appearances or Public Events

Your organization may wish to communicate with a qualifying official about its grassroots lobbying efforts or media campaigns and may want to invite qualifying officials to participate in these events. The FPPC has clarified in an informal advice letter that communicating with the author of a specific bill for the purpose of coordinating the author's participation in media and grassroots activities associated with the legislation will not count as direct communication.[47] This activity may still be considered direct or grassroots lobbying, discussed in Chapter 2, Section 2(A), page 6 and Chapter 2, Section 2(C), page 10, but the employee will not need to count the time toward the threshold for registering as a lobbyist.

In calculating time spent in direct communication, the employee is *not* required to include the time spent in travel to or from a meeting with a qualifying official in connection with making the direct communication.[48] The employee also does not need to track time spent traveling to meet with other employees of the organization or for meetings to "discuss and confer on legislative or administrative issues."[49] This would, for example, allow the employee to exclude time spent strategizing about his testimony with a fellow employee.

Tracking Travel Time

Remember that while an employee must count travel time in determining whether an employee of the organization has spent 10% or more of her time in a calendar month on direct lobbying or grassroots lobbying (See Chapter 2, Section 2(A), page 6), employees do not need to count travel time as part of a direct communication.

We have requested the FPPC harmonize the rules for employee travel, but as of the time of this publication this inconsistency still exists.

The employee must include time spent making a direct communication under the direction of another employee of the organization.[50]

For example, if the president of the organization directs a program staff member to call a senator to express the organization's opposition to a specific legislative proposal and outlines the reasons for the organization's opposition, the president

45 2 Cal. Code of Regs. 18239.

46 Kelso Advice Letter, FPPC No. A-97-151.

47 FPPC Hiltachk Advice Letter, FPPC No. I-93-124.

48 FPPC *Lobbying Disclosure Information Manual*, page 1–4 (2005)

49 Pessner Advice Letter, FPPC No. I-93-268.

50 The FPPC has not clarified the difference between directing an employee to make a communication vs. offering strategic advice or discussing an issue with a subordinate. As such, individuals in leadership positions may wish to consult with the FPPC regarding what staff time should be counted.

would count as direct communication the time spent giving direction to the program staff member, and the program staff member would count as direct communication the time spent actually delivering the communication.

The employee must include time spent making a direct communication under the direction of another employee of the organization.

Requests for Technical Assistance Treated as Direct Communication
For organizations that have taken the 501(h) election, under federal tax law, submitting a response to written requests for assistance from a government body is not considered lobbying. For example, if the chair of the legislative committee on health and human services wrote to your organization and requested that your organization testify in support of a particular budget proposal, such testimony would not count as lobbying if the testimony were made available to all members of the committee. As discussed in Chart 1, there is no similar exception from the definition of direct communication or from direct lobbying under the CPRA.

CHART 1—UNDERSTANDING THE DIFFERENCES BETWEEN FEDERAL TAX LAW AND CALIFORNIA LOBBYING LAWS

Organizations are often unsure about whether to count certain types of communications as lobbying under federal tax law and/or under California law. This chart is designed to help an organization decide how to categorize a particular communication on her timesheet. The following chart breaks down whether a particular communication should be tracked as a communication under the definition of lobbying included in Section 501(h) of the tax code, as a direct communication under California law (for the purposes of determining if an employee or consultant is a lobbyist) or as a lobbying communication under California law.

PROPOSED ACTIVITY	LOBBYING COMMUNICATION UNDER 501(h)?	"DIRECT COMMUNICATION" UNDER CALIFORNIA LAW?	COMMUNICATION UNDER CALIFORNIA LAW?
Making or receiving phone calls	Yes, if expressing a view about specific legislation	Yes	Yes
Attending an in-person meeting with a qualifying official	Yes, if expressing a view about specific legislation	Yes	Yes
Attending a meeting or phone call with a qualifying official, and the organization's registered lobbyist is also in attendance	Yes, if expressing a view about specific legislation	No, so long as the person attending the appointment is an employee or officer of the nonprofit	Yes
Providing oral or written testimony at a hearing before a qualifying official	Yes, unless invited in writing by the body (e.g., by a committee or subcommittee chair or anyone else authorized to ask on behalf of the body) and testimony is provided to all members of the body	Yes, unless you are providing administrative testimony included on the public record for the meeting	Yes
Purely social contacts	No	No	No
Hosting a symposium or blue ribbon panel or distributing written materials to educate legislators about specific legislative issues	Not if: (1) the event or material provides enough factual information to allow readers to draw their own conclusions about the issue, even if the report itself contains a specific conclusion, and (2) the report is widely distributed to the public and not shared exclusively with audiences who agree with the authors; in addition, the report may not direct readers to contact legislators about the issue	Yes, if a qualifying official attends the symposium or receives the materials *unless* the purpose of the symposium or written materials is purely "academic" (i.e., you do not intend to influence the outcome of the legislation and the organization is not otherwise engaged in activities intended to influence the outcome of the legislation)	Yes, if a qualifying official attends the symposium or receives the materials *unless* the purpose of the symposium or written materials is purely "academic" (i.e., you do not intend to influence the outcome of the legislation and the organization is not otherwise engaged in activities intended to influence the outcome of the legislation)
Answering inquiries from a government body	Yes, unless invited in writing by the board or committee to provide information, and responses are provided to all members of government body	Yes, unless the material is provided to an administrative agency, the information is limited to "purely technical data," and the organization is not otherwise engaged in any activities intended to influence the outcome of the legislation	Yes

CHART 1—UNDERSTANDING THE DIFFERENCES BETWEEN FEDERAL TAX LAW AND CALIFORNIA LOBBYING LAWS *(continued)*

PROPOSED ACTIVITY	LOBBYING COMMUNICATION UNDER 501(h)?	"DIRECT COMMUNICATION" UNDER CALIFORNIA LAW?	COMMUNICATION UNDER CALIFORNIA LAW?
Performing purely administrative functions to support the organization's lobbying efforts (e.g., scheduling meetings, typing letters)	Yes, though organizations often treat these costs as part of the organization's lobbying overhead	No	No
Preparing for a communication with a qualifying official	Yes, if the primary purpose for activity is lobbying	No, unless the preparation is part of the communication itself (e.g., drafting a letter, looking over your notes before a meeting)	Yes
Urging members of the public to contact public officials about a particular decision	Yes, this may be grassroots lobbying if the organization includes one of four specific "calls to action"	No	Yes

(5) With a Qualifying Official

A qualifying official includes anyone elected to a statewide office, legislators, their staff, and staff, board members, commissioners, and consultants of state agencies. This term is more fully defined in Chapter 2, Section 2(B)(2), page 7.

CHART 2—IS THE OFFICIAL YOU ARE TRYING TO INFLUENCE A COVERED OFFICIAL?

Organizations are often unsure about whether to count communications with certain officials as lobbying under federal tax law as well as under California law. This chart is designed to help an organization decide how to categorize a communication with a particular official on her timesheet. The following chart breaks down whether a particular official is a "legislator" under Section 501(h) of the tax code or a "qualifying official" under California law.

OFFICIAL YOUR ORGANIZATION WOULD LIKE TO INFLUENCE	IS THE PERSON A "LEGISLATOR" UNDER SECTION 501(h) OF THE TAX CODE?	IS THE PERSON A "QUALIFYING OFFICIAL" UNDER CALIFORNIA LAW?
Governor and governor's cabinet and staff	Yes, *if* he is involved in the formulation of legislation, such as a veto or signing bill(s)	Yes
State constitutional officers (e.g., insurance commissioner, attorney general, controller) and their staff	Yes, *if* she is involved in the formulation of legislation	Yes
California State Assemblymembers or Senators and their staff	Yes	Yes
Board member serving on state-level appointed board (e.g., Department of Industrial Relations, State Coastal Commission)	Yes, *if* he is involved in the formulation of legislation *and* he has the authority to influence the legislation	Yes
Director of a state administrative agency or board	Yes, *if* she is involved in the formulation of legislation *and* she has the authority to influence the legislation	Yes
Receptionist or clerical staff of a government agency	Likely no, unless he may participate in the formulation of legislation (e.g., you communicate a message to be forwarded on to a legislator)	No

CHART 2—IS THE OFFICIAL YOU ARE TRYING TO INFLUENCE A COVERED OFFICIAL? *(continued)*

OFFICIAL YOUR ORGANIZATION WOULD LIKE TO INFLUENCE	IS THE PERSON A "LEGISLATOR" UNDER SECTION 501(h) OF THE TAX CODE?	IS THE PERSON A "QUALIFYING OFFICIAL" UNDER CALIFORNIA LAW?
City council members or members of a county board of supervisors	Yes	No
Members of school boards, county boards of education, local zoning, housing authorities or other special purpose bodies	No	No
Members of the public re: ballot measures, constitutional amendments, referenda, bond measures	Yes	No, although state ballot measure activity may need to be separately reported under different provisions of state law

(6) For Purpose of Influencing

Not every communication with a qualifying official will be deemed to be "for the purpose of influencing" state legislative or administrative action. However, this term has historically been defined quite broadly by the FPPC.

(7) State Legislative or Administrative Action

The term "legislative or administrative action" includes any bill, resolution, amendment, report, nomination, state ratemaking, or state rulemaking proceeding. For a full discussion of the types of decisions included within the scope of this term, see Chapter 2, Section 2(B)(4), page 9. Additional examples are provided in Chart 3.

CHART 3—ARE YOU INFLUENCING A COVERED DECISION?

Organizations are often unsure about whether to count certain decisions as lobbying under federal tax law as well as under California law. This chart is designed to help an organization decide how to categorize a communication on a particular decision on an employee's timesheet. The following chart breaks down whether a communication on a particular decision would be treated as "specific legislation" under Section 501(h) of the tax code or a "legislative or administrative action" under California law.

DECISION YOUR ORGANIZATION WANTS TO INFLUENCE	IS IT "SPECIFIC LEGISLATION" UNDER SECTION 501(h) OF TAX CODE?	IS IT "LEGISLATIVE OR ADMINISTRATIVE ACTION" UNDER CALIFORNIA LAW?
A pending or proposed bill, resolution, budget, appropriation, or tax (including using terms that have been widely used in connection with the legislation (e.g., the governor's prison reform bill)	Yes	Yes
A pending or proposed regulation, ratemaking (e.g., setting the sales tax rate), or other similar decision by an administrative agency	No	Yes
Administrative hearing on decisions that impact only one person or a small group of people (e.g., whether overtime wages are required for a specific employee)	No	No

CHART 3—ARE YOU INFLUENCING A COVERED DECISION? *(continued)*

DECISION YOUR ORGANIZATION WANTS TO INFLUENCE	IS IT "SPECIFIC LEGISLATION" UNDER SECTION 501(h) OF TAX CODE?	IS IT "LEGISLATIVE OR ADMINISTRATIVE ACTION" UNDER CALIFORNIA LAW?
A discussion with a covered official on a general policy issue	No, unless the primary purpose for the conversation is to influence legislation	No, unless the discussion includes a suggestion of a legislative or administrative solution for the problem
Nomination of a judge or state agency official	Yes, if it requires a vote of the legislature to approve	Yes
Legislation impacting the organization's existence, its powers and duties, its tax-exempt status, or the deductibility of contributions	No, as whether the legislation actually impacts these issues is a matter to be raised with an attorney	Yes
A contract, permit, or license issued by a state agency	No, unless the contract requires approval through a resolution or other similar vote of the state legislature	No, unless you are attempting to influence the terms of a contract that will apply to all subsequent similar contracts, permits, or licenses
Executive order issued by the Governor	No	Yes
Litigation challenging specific legislation	No	No
Treaties	Yes, if it requires approval by the legislature (counting as specific legislation from the time the governor starts negotiating the treaty)	Yes

CHART 4—LOBBYING THRESHOLDS FOR IN-HOUSE EMPLOYEES OF AN ORGANIZATION

All of the examples included in this chart assume that the organization is not doing any lobbying outside of what is described in the example. This chart analyzes only California's lobbying disclosure laws, not federal tax law.

PROPOSED ACTIVITY	AM I A "LOBBYIST?"	IF YES, WHAT FORMS MUST I FILE?	MUST MY EMPLOYER FILE ANY FORMS?	IF YES, WHAT FORMS MUST MY EMPLOYER FILE?
I will attend my organization's annual lobby day in Sacramento, conduct some research on pending legislation, and make a few phone calls to legislative staff. I will spend somewhere between 10% and 25% of my time every month for the purpose of influencing state-level legislative and administrative decisions.	No. In order to be a lobbyist, you must spend a third or more of your compensated time in a calendar month making direct communication with qualifying officials.	n/a	Possibly, if your organization spends a total of $5,000 or more in a calendar quarter for the purpose of influencing a legislative or administrative action, including your lobby day and a *pro rata* portion of your salary (as well as any other staff members who spend 10% per calendar month on lobbying).	If your employer spends $5,000 or more in any quarter, it must file a Form 645 by the end of the month following the end of the quarter. Your organization will only need to file a Form 645 in quarters in which it spends $5,000 or more on state lobbying. Lobby registration is not required for $5,000 filers.

CHART 4—LOBBYING THRESHOLDS FOR IN-HOUSE EMPLOYEES OF AN ORGANIZATION *(continued)*

PROPOSED ACTIVITY	AM I A "LOBBYIST?"	IF YES, WHAT FORMS MUST I FILE?	MUST MY EMPLOYER FILE ANY FORMS?	IF YES, WHAT FORMS MUST MY EMPLOYER FILE?
I will spend 35% of my compensated time in January writing letters, making phone calls, drafting emails, and attending in-person meetings with state legislators and their staff for the purpose of influencing state legislation. The *pro rata* portion of my salary attributable to this activity would be $2,000, and my expenses for traveling to the capitol for meetings will be $150.	Yes, even if your employer does not spent $5,000 on lobbying, you are still a lobbyist because you are proposing to spend a third or more of your time in a calendar month making direct communication with legislative or administrative officials.	You will file a Form 604 within 10 days after you first spend one third or more of your time in a calendar month making direct communication, and you must file a Form 615 each calendar quarter until you terminate your status as a lobbyist.	Yes. Because you will be a lobbyist, your employer is a lobbyist employer	Your employer must file a Form 603 to register and to authorize you to lobby on its behalf within 10 days after you first spend one third or more of your time in a calendar month making direct communication. Additionally, the organization must file a Form 635 each calendar quarter until the registration is terminated.
Same facts as above except that in February I will not make any direct communication, although I will continue to conduct research on pending legislation, and in March I will make one direct communication with a legislator for the purpose of influencing state legislation. This communication will not equal a third of my time.	Yes. Because you triggered the status as a lobbyist in January you continue to be a lobbyist in February and March, even if you do not make direct communication or you spend less than a third of your time making direct communication.	Same as above, except you should note that once you become a lobbyist all of your compensation in support of your organization's lobbying efforts (including research, preparation, travel time, and direct communications) must be disclosed on your Form 615.	Yes. Because you will be a lobbyist, your employer is a lobbyist employer.	Same as above.
I will spend 36% of my time in July making direct communication with legislators and their staff for the purpose of influencing state legislative matters. This time will be spent working on a variety of legislative issues, and I will not spend a third of my time working on any single issue. The *pro rata* portion of my salary attributable to lobbying is $2,500, and my expenses for traveling to the capitol for meetings are $150.	Yes, you are a lobbyist regardless of how many issues you lobby on during a quarter or how much time you spend lobbying on each issue.	You will file a Form 604 within 10 days after you first spend a third or more of your time in a calendar month making direct communication, and you must file a Form 615 each calendar quarter until you terminate your status as a lobbyist.	Yes. Because you will be a lobbyist, your employer is a lobbyist employer.	Same as above.

CHART 4—LOBBYING THRESHOLDS FOR IN-HOUSE EMPLOYEES OF AN ORGANIZATION *(continued)*

PROPOSED ACTIVITY	AM I A "LOBBYIST?"	IF YES, WHAT FORMS MUST I FILE?	MUST MY EMPLOYER FILE ANY FORMS?	IF YES, WHAT FORMS MUST MY EMPLOYER FILE?
I serve as an unpaid volunteer for an organization, and I may spend a third of my volunteer time in direct communication with legislators and their staff for the purpose of influencing state legislation The organization will not have any expenses for its lobbying efforts.	No, because you are not paid to engage in the lobbying efforts.	n/a	No, because your employer does not meet the definition of a lobbyist employer or a $5,000 filer.	None.
I may spend 25% of my time each month in July, August, and September researching the impacts of pending state legislation and drafting alternative language. I also make one 30-minute phone call to a state legislator for the purpose of influencing state legislation. The *pro rata* portion of my salary attributable to lobbying would be $5,750, and the organization will not have any other lobbying expenditures.	No, in order to be a lobbyist, you must spend a third or more of your compensated time in a calendar month making direct communication with qualifying officials. Since you are only spending 25% of your time in each of the calendar months, you do not meet the threshold. Additionally, the time you spend monitoring and researching will not count toward the threshold unless these efforts are actually part of the direct communication.	n/a	Yes, as a $5,000 filer. Although your employer is not a lobbyist employer, it must still file forms as a $5,000 filer since the organization's total lobbying expenditures will be $5,000 or more in the quarter. Note this answer would be different if you instead spent 9% per calendar month on lobbying. In that instance, your organization would not need to factor in your salary.	Your employer must file a Form 645 by the end of the month following the end of this quarter. Your organization will only need to file a Form 645 for quarters in which it spends $5,000 or more on state lobbying.
I may spend 100% of my time monitoring and conducting research on state legislation during the next quarter. I will not make any direct communication with legislative or administrative officials during the quarter. The *pro rata* portion of my salary for this period will be $7,768.	No, in order to be a lobbyist, you must spend a third or more of your compensated time in a calendar month making direct communication with qualifying officials. Time spent monitoring legislation and conducting research will not count as direct communication unless it is actually part of preparing to make the direct communication.	n/a	No, because your employer does not meet the definition of a lobbyist employer or a $5,000 filer.	n/a

CHART 4—LOBBYING THRESHOLDS FOR IN-HOUSE EMPLOYEES OF AN ORGANIZATION *(continued)*

PROPOSED ACTIVITY	AM I A "LOBBYIST?"	IF YES, WHAT FORMS MUST I FILE?	MUST MY EMPLOYER FILE ANY FORMS?	IF YES, WHAT FORMS MUST MY EMPLOYER FILE?
Same facts as above, except my colleague will use the data I collected to draft a letter to a legislator for the purpose of influencing state legislation. She will spend 7% of her time in a calendar month drafting this letter. The *pro rata* portion of her salary attributable to making this communication will be $750.	No, *unless* your colleague will make this direct communication at your direction or under your supervision. (Note: If she made this communication at your direction or under your supervision, you would be a lobbyist if you spent a third of your time in a calendar month directing or supervising this communication or preparing to make the communication.)	n/a	Yes, as you are a $5,000 filer. Although your employer is not a lobbyist employer, it must still file forms as a $5,000 filer since the organization's total lobbying expenditures will be $5,000 or more in the quarter. Note that since the organization is actually communicating its views on the legislation, the answer here is different from that in the previous example. The organization does not need to factor in the salary of your colleague because she did not spend 10% or more of her time on lobbying.	Your employer must file a Form 645 by the end of the month following the end of this quarter. The organization will only need to file a Form 645 for quarters in which it spends $5,000 or more on state lobbying.
I will spend 50% of my time in June and July monitoring issues pending before a state administrative agency, and I will prepare for and provide written and oral testimony at a hearing before this state agency. This testimony will be provided at an open public hearing, and my testimony will be included on the public record for the meeting. I will not make any other direct communication. The *pro rata* cost of my salary and expenses attributable to lobbying will be $4,500.	No, you are not a lobbyist because your testimony qualifies for the administrative testimony exception. Additionally, the time spent in June and July does not count because you were simply monitoring the actions of the administrative agency.	n/a	No, because your employer does not meet the definition of a lobbyist employer or a $5,000 filer (less than $5,000 spent on your time).	n/a

CHART 4—LOBBYING THRESHOLDS FOR IN-HOUSE EMPLOYEES OF AN ORGANIZATION *(continued)*

PROPOSED ACTIVITY	AM I A "LOBBYIST?"	IF YES, WHAT FORMS MUST I FILE?	MUST MY EMPLOYER FILE ANY FORMS?	IF YES, WHAT FORMS MUST MY EMPLOYER FILE?
Same scenario as presented above, except that the *pro rata* cost of my salary attributable to lobbying will be $5,000.	No, you are not a lobbyist because your testimony qualifies for the administrative testimony exception.	n/a	Yes, since the organization's total lobbying expenditures will be $5,000 or more in the quarter.	Your employer must file a Form 645 by the end of the month following the end of this quarter. The organization will only need to file a Form 645 for quarters in which spends $5,000 or more on state lobbying.
I will spend 8% of my time in March monitoring, preparing for, and providing written and oral testimony at a hearing of a state administrative agency. The total cost of my salary attributable to lobbying will be $500. My organization will also pay $4,500 for printing materials to distribute at the hearing.	No.	n/a	No, because your employer does not meet the definition of a lobbyist employer or a $5,000 filer. Your employer is not a $5,000 filer because its expenditures for the quarter are only $4,500—since it can exclude your salary from the calculation because you did not spend 10% or more of your time in a calendar month on lobbying.	None.
I will spend 42% of my time in May drafting a direct mail campaign urging members of the public to call their senator and tell them to "Vote Yes on AB 43." I will not make any direct communication with legislative or administrative officials The total cost of the *pro rata* portion of my salary and the costs of the mail will be $15,500.	No, in order to be a lobbyist, you must spend a third or more of your compensated time in a calendar month making direct communication with qualifying officials. Time spent making grassroots lobbying communications does not qualify as direct communication.	n/a	Yes, since the organization's total lobbying expenditures were $5,000 or more in the quarter.	Your employer must file a Form 645 by the end of the month following the end of this quarter. Your organization will only need to file a Form 645 for quarters in which it spends $5,000 or more on state lobbying.

CHART 4—LOBBYING THRESHOLDS FOR IN-HOUSE EMPLOYEES OF AN ORGANIZATION *(continued)*

PROPOSED ACTIVITY	AM I A "LOBBYIST?"	IF YES, WHAT FORMS MUST I FILE?	MUST MY EMPLOYER FILE ANY FORMS?	IF YES, WHAT FORMS MUST MY EMPLOYER FILE?
I will spend 10% of my time in May meeting with the staff of a state administrative agency for the purpose of influencing state regulations. Additionally, I will spend 9% of my time in May working to oppose a state-wide ballot measure. The total cost of the *pro rata* portion of my salary for work on both the regulations and the measure will be $1,000. I am the only employee of the organization working on either the regulations or the measure, and we will not have any other out-of-pocket expenses.	No, in order to be a lobbyist, you must spend a third or more of your compensated time in a calendar month making direct communication with qualifying officials concerning legislative or administrative action. Ballot measures are not legislative or administrative actions.	n/a	The organization only needs to factor in the portion of your salary spent working on the regulations. You do not need to include into this calculation your time spent working to oppose the measure. Since the organization's total expenses will not be $5,000 or more, no forms are required.	None.
I meet the thresholds for registering as a lobbyist, but my work is done on behalf of a coalition of five organizations. I am paid by one of the organizations, but four other organizations contribute money to help pay for my salary.	Yes, you must register as a lobbyist and possibly a lobbying firm. Additionally, you should contact the FPPC to discuss what reporting may be required for the rest of the coalition partners.	The forms you will file will depend upon what filing obligations will be required for your coalition partners.	Yes. Because you will be considered a lobbyist and possibly a lobbying firm, your employer is a lobbyist employer.	Your employer must file a Form 603 to register and to authorize you to lobby on its behalf within 10 days after you first spend a third or more of your time in a calendar month making direct communication Additionally, the organization must file a Form 635 each calendar quarter until the registration is terminated.

(B) Contract Lobbyist

Even if an organization does not have any in-house employees who meet the definition of a lobbyist—or even if the organization has no in-house employees who lobby at all—it may still trigger lobbyist employer reporting. Another way to qualify as a lobbyist employer is to pay an outside consultant (e.g., an expert in the field) who is either already registered as a lobbying firm or who would meet the test for a contract lobbyist or a lobbying firm based on the work for the organization (discussed below).

A contract lobbyist is: (1) an individual consultant or contractor (2) who receives or becomes entitled to receive $2,000 or more in a calendar month for making direct communication (other than administrative testimony) (3) to qualifying officials (4) for the purpose of influencing (5) one or more state legislative or administrative actions.[51]

When entering into contracts with consultants, organizations should be careful to draft contracts that clearly delineate how much is being paid for lobbying activities versus non-lobbying activities on the same issue.

Who Is a Contract Lobbyist?
Not all contractors that engage in advocacy on behalf of the organization will meet the definition of a contract lobbyist. Contract lobbyists are contractors and consultants hired by the nonprofit to make direct communication on its behalf. In order to qualify as a contract lobbyist, the contractor or consultant must be paid a specific amount of money per calendar month.

(1) Individual Consultant or Contractor

Includes contract employees or vendors of the organization, lawyers, campaign consultants, grassroots organizers, or other individuals who are compensated by the organization even though they are not an employee of the organization.

(2) Receives or Is Entitled to Receive $2,000 or More in a Calendar Month

In order to meet this threshold, the consultant must either receive or become "entitled to receive" (e.g., by entering into a contract or contracts) $2,000 or more in a calendar month for engaging in direct communication other than administrative testimony. This is true regardless of when the payment is actually made or received.

What Is Administrative Testimony?
If you hire a consultant to provide oral or written testimony to an administrative agency, those payments will *not* count toward the threshold for registering as a contract lobbyist if the testimony is provided in the course of an administrative proceeding conducted as an open public hearing, and there is a public record of the proceeding. For information on administrative testimony before the California Public Utilities Commission (CPUC), see page 8.

This $2,000 may be received from only one organization or from a number of organizations. It is a cumulative total of the amounts received by the consultant for engaging in these activities. For example, if your organization contracted with a consultant for $500 per calendar month, but the consultant received $2,000 per calendar month from another unrelated organization, you would count both the $500 from your organization as well as the $2,000 from the other organization in determining if the monthly compensation test is met. It may, therefore, be helpful to find out if any consultant you hire has multiple clients to determine if hiring the consultant may make your organization a lobbyist employer. Although

51 Government Code Section 82039; 2 Cal. Code of Regulations 18239.

the consultant is not required to tell your organization about the payments he receives from other organizations, once the consultant meets the test set out in this section, your organization must file a form authorizing the consultant to lobby on your behalf. More details on the authorization process are discussed in Chapter 3 of this publication.

If multiple organizations join together to hire a contract lobbyist, each organization will become a lobbyist employer and need to report their payments separately to the contract lobbyist, regardless of how much each organization pays for the contract lobbyist. One exception to this rule applies to lobbying coalitions. See the discussion of lobbying coalitions in Chapter 2, Section 2(E), page 12.

When entering into contracts with consultants, organizations should be careful to draft contracts that clearly delineate how much is being paid for lobbying activities versus non-lobbying activities on the same issue and whether the consultant is authorized to engage in direct communication with qualifying officials on the organization's behalf for the purpose of attempting to influence state legislative or administrative action.[52] Additionally, your organization may consider entering into separate contracts for lobbying and non-lobbying activities, so your organization can clearly demonstrate that only that portion of the contract for lobbying tasks counts towards the registration threshold and must be reported as payments for lobbying services.

For example, if an organization hires a law firm to engage in lobbying on emissions standards legislation and to research the history of air quality in California for distribution as an educational tool in local high schools, the organization and the firm will benefit from entering into two contracts for the lobbying and non-lobbying activities.

(3) With a Qualifying Official

A qualifying official includes anyone elected to a statewide office, legislators and their staff, as well as staff, board members, commissioners, and consultants of state agencies. This term is more fully defined in Chapter 2, Section 2(B)(2), page 7.

(4) For Purpose of Influencing

An activity is done "for the purpose of influencing" whenever it promotes, supports, influences, modifies, opposes, or delays a legislative or administrative action by any means, including providing or using information, statistics, studies, or analyses. Of course, not every communication with a qualifying official will be deemed to be for the purpose of influencing state legislative or administrative action. For a full discussion of activities that are considered to be for the purpose of influencing, see Chapter 2, Section 2(B)(3), page 8.

(5) State Legislative or Administrative Action

The term "legislative or administrative action" includes any bill, resolution, amendment, report, nomination, state ratemaking, or state rulemaking

52 Daum Advice Letter, FPPC No. I-96-371.

proceeding. For a full discussion of the types of decisions included within the scope of this term, see Chapter 2, Section 2(B)(4), page 9. We offer additional examples of this term in Chart 3.

(C) Lobbying Firm

Nonprofit organizations often hire a lobbying firm, consulting firm, or law firm to help the organization draft legislation or regulations or navigate through a legislative or administrative process. If the organization engages the services of a registered lobbying firm for the purpose of influencing state legislative or administrative action, the organization will become a lobbyist employer. If your organization hires a consulting firm or other entity that is not a currently a registered lobbying firm, the entity will qualify as a lobbying firm if it is (1) a business entity (2) that will receive or become entitled to receive $5,000 or more in any calendar quarter from your organization alone or from a number of organizations (3) for the purpose of influencing a legislative or administrative action and (4) an employee, owner, or officer of that business entity engages in direct communication (5) with a qualifying official.[53]

If your organization engages the services of a registered lobbying firm for the purpose of influencing state legislative or administrative action, your organization will become a lobbyist employer.

Additionally, any business entity that has an employee, officer, owner, or partner who meets the definition of contract lobbyist, as discussed above, is a lobbying firm.[54]

What Is a Lobbying Firm?

A lobbying firm is (1) a business entity (2) that will receive or become entitled to receive $5,000 or more in any calendar quarter from your organization alone or from a number of organizations (3) for the purpose of influencing a legislative or administrative action *and* (4) an employee, owner, or officer of that business entity engages in direct communication (5) with a qualifying official.

(1) A Business Entity

The payments must be made to a business entity that includes a sole proprietorship. This could include a law firm, a consulting firm, or an individual that is consulting for profit. We believe the term should exclude nonprofit organizations, since they are not operated for a business purpose, but the FPPC has not yet addressed this issue.

Can a Nonprofit Organization Be Considered a Lobbying Firm?

Nonprofit organizations do not seem to meet the definition of a lobbying firm because they are not "business entities." However, the FPPC has never affirmatively confirmed this. The only way the nonprofit organization itself would potentially need to register as a lobbying firm is if the organization itself receives compensation for lobbying on behalf of others and meets the definitions discussed in this section. Prior to registering as a lobbying firm, an organization should contact the FPPC for advice.

(2) $5,000 in a Calendar Quarter

When applying the $5,000 compensation test, the firm must aggregate fees earned from all clients for which it has been authorized to engage

53 2 Cal. Code of Regs. 18238.5(a).

54 Sutton Advice Letter, FPPC No. I-99-093.

in direct communication during the quarter to determine whether it has reached the $5,000 threshold. As such, when your organization hires a consulting firm that is not yet registered as a lobbying firm, it may be worthwhile to inquire whether the firm has any other clients that have authorized the firm to engage in direct communication.[55]

This publication is geared toward nonprofit organizations, rather than companies in the business of lobbying. As such, this publication does not focus on the various ways these business entities may trigger lobbyist disclosure reports. Entities in the business of lobbying are encouraged to contact the FPPC for more information on how they need to structure their activities to comply with the law.

(3) For the Purpose of Influencing

The standards for both in-house and contract lobbyists only require the organization to consider payments made "for engaging in direct communication."

The standards for both in-house and contract lobbyists only require the organization to consider payments made "for engaging in direct communication." However, the definition for a lobbying firm is different in that the payments need only be made for the purpose of influencing to count toward the threshold for registration. The following activities would count as being done for the purpose of influencing in the context of a lobbying firm:

- Preparation work undertaken for the purpose of engaging in direct communication.[56] This includes such activities as conducting studies, researching, writing correspondence, developing testimony, and attending hearings and meetings, if such activities are done in connection with direct communication.
- Grassroots lobbying, public relations, coalition building, mailings, advertisements, telephone solicitations, or other activities that solicit or urge others to enter into direct communication with a qualifying official.[57]
- Travel for making a direct communication.[58]
- Legal research and drafting legislation, if done in connection with making a direct communication.[59]

Because the payments must be made for the purpose of influencing, the organization does not need to include payments to a business entity solely to monitor or draft legislation. To illustrate, it would not be considered for the purpose of influencing if a consumer rights organization hired a law firm solely to monitor pending legislative proposals dealing with foreclosures and affordable housing.[60]

However, if at any time within one year after the services are provided the organization authorizes the entity to make any direct communication with qualifying officials on a matter the firm monitored (or substantially the same

55 Sutton Advice Letter, FPPC No. I-99-093.

56 Cal. Govt. Code Section 82045(d).

57 Cal. Govt. Code Section 82045(d) and (e); Sutton Advice Letter, FPPC No. I-99-093.

58 Cal. Govt. Code Section 82045(d); Civitello-Joy Advice Letter, FPPC No. A-08-129

59 Sutton Advice Letter, FPPC No. I-99-093.

60 Note, however, that if your organization were already a lobbyist employer, it would need to report any payments made to a lobbying firm for legal services related to its lobbying interests or to monitor legislation as "other payments to influence" (2 Cal. Code of Regulations 18616).

matter), the payments would be considered for the purpose of influencing, and the organization would need to report the payments retroactively as payments for lobbying services.[61]

In general, payments for meetings with your organization will not count toward the $5,000 threshold.[62]

(4) State Legislative or Administrative Action

The term "legislative or administrative action" includes any bill, resolution, amendment, report, nomination, state ratemaking, or state rulemaking proceeding. For a full discussion of the types of decisions included within the scope of this term, see Chapter 2, Section 2(B)(4), page 9. We offer additional examples of this term in Chart 3.

(5) Direct Communication

Additionally, an employee, owner, or officer of the business entity must be explicitly or implicitly authorized[63] to engage in at least one direct communication with a qualifying official. For example, if your organization hired a law firm to draft legislation that would modify the state's unemployment disability benefits program and authorized a lawyer from the firm to talk to a committee consultant in the assembly to explain why a certain provision was included in the draft bill, all of the payments to the firm for the purpose of influencing would count toward the threshold. However, the firm could exclude payments for litigation or other services unrelated to influencing legislation.

(6) With a Qualifying Official

A qualifying official includes anyone elected to a statewide office, legislators and their staff, board members, commissioners, and consultants of state agencies. This term is more fully defined in Chapter 2, Section 2(B)(2), page 7.

CHART 5—LOBBYING THRESHOLDS—CONSULTANTS OF AN ORGANIZATION

PROPOSED ACTIVITY	AM I A "LOBBYIST?"	IF YES, WHAT FORMS MUST I FILE?	MUST THE ORGANIZATION FILE ANY FORMS?	IF YES, WHAT FORMS MUST THE ORGANIZATION FILE?
An organization recently paid me $3,000 to lobby the legislature on three different bills. I will be paid an additional $2,000/month through the end of the legislative session.	Yes, because you are entitled to receive $2,000 or more in a calendar month for making direct communication.	You will file Forms 601, 602, and 604 within 10 days after entering into the contract and prior to making any direct communication to register as a lobbyist and lobbying firm. Thereafter, you must file Forms 625 and 615 each calendar quarter until you terminate your status as a lobbyist and lobbying firm.[64]	Yes, because the organization is now a lobbyist employer.	The organization hiring you must execute and provide to the lobbying firm Activity Authorization (FPPC Form 602) for you to file with Forms 601 and 604 before you may engage in any lobbying contacts. Thereafter, the organization will be required to file the Form 635 every quarter.

61 2 Cal. Code Regs. 18614.

62 Sutton Advice Letter, FPPC No. I-99-093.

63 2 Cal. Code of Regs. 18614(a)(1).

64 Contract Lobbyists are required to register and file reports as lobbying firms. These answers all assume that the lobbyist only has one client. Different rules/thresholds apply of the lobbyist has other clients.

CHART 5—LOBBYING THRESHOLDS—CONSULTANTS OF AN ORGANIZATION *(continued)*

PROPOSED ACTIVITY	AM I A "LOBBYIST?"	IF YES, WHAT FORMS MUST I FILE?	MUST THE ORGANIZATION FILE ANY FORMS?	IF YES, WHAT FORMS MUST THE ORGANIZATION FILE?
An organization recently signed a contract for me to lobby the Legislature to approve AB 1234. I have not yet been paid under the contract; but I am entitled to receive $2,200/month for my work	Yes, because you are now entitled to receive $2,000 or more in a calendar month for making direct communication.	You will file Forms 601, 602 and 604 within 10 days of signing the contract to receive $2,000 in a calendar month and you must file Forms 625 and 615 each calendar quarter until you terminate your status as a lobbyist and lobbying firm.	Yes, because the organization is now a lobbyist employer.	The organization hiring you must execute and provide to the lobbying firm Activity Authorization (FPPC Form 602) for you to file with the Forms 601 and 604 before you may engage in any lobbying contacts. Thereafter, the organization will be required to file the Form 635 every quarter.
An organization recently hired me to monitor legislation. My contract does not call for me to make any direct communication with qualifying officials. My total compensation under the contract will be $5,500.	No, since you are not authorized to make any direct communications with qualifying officials.	None.	No, unless your organization spends a total of $5,000 in a calendar quarter for the purpose of influencing a legislative or administrative action. Payments made to you for the purposes of monitoring legislation will not count toward this threshold.[65]	None.
An organization recently paid me $2,000 to lobby the California Governor to sign AB 1234. After the bill is signed or vetoed, I will not do any additional work	Yes, because you are being paid $2,000 or more in a calendar month for making direct communication.	You will file Forms 601, 602, and 604 within 10 days after entering into the contract for payment and prior to making any direct communication. Thereafter, you must file Forms 625 and 615 each calendar quarter until you terminate your status as a lobbyist.	Yes, because the organization is now a lobbyist employer.	The organization hiring you must execute the lobbying firm Activity Authorization (FPPC Form 602) for you to file with your Forms 601 and 604 before you may engage in any lobbying contacts. Thereafter, the organization will be required to file the Form 635 every quarter.
I have been hired to provide only written and oral testimony on the record of a public hearing before a state administrative agency. I will receive compensation totaling $5,100 for preparing and giving this testimony. I am not registered as a lobbyist or a lobbying firm.	No, because payments made were for providing Administrative Testimony, which does not trigger reporting as a contract lobbyist/ lobbying firm. Note that this answer would be different if you were already a registered contract lobbyist/lobbying firm.	None.	Yes. Although your employer is not a lobbyist employer, it must still file forms as a $5,000 filer since the organization's total lobbying expenditures will be $5,000 or more in the quarter. Payments made to you for the purposes of making administrative testimony count toward this threshold.	Your client must file Form 645 by the end of the month following the end of this quarter Your client will only need to file Form 645 for quarters in which it spends $5,000 or more on state lobbying

65 Note, however, that if the organization was already a lobbyist employer, it would need to report any payments made to a lobbying firm for legal services related to its lobbying interests or to monitor legislation as "other payments to influence." (2 Cal. Code of Regulations 18616.)

CHART 6—COMPARISON OF FEDERAL TAX LAW AND CALIFORNIA LOBBBYING EXCEPTIONS

RELEVANT EXCEPTION	IRS LOBBYING EXCEPTION UNDER 501(h) EXPENDITURE TEST AND FOR PRIVATE FOUNDATIONS	CALIFORNIA LOBBYING EXCEPTIONS
Responding to requests for technical advice or assistance	Submitting a response to written requests for assistance from a government body is not lobbying. For example, if the chair of the Assembly Budget Committee wrote to your organization and requested that you testify in support of a particular line item in the budget, such testimony would not count as lobbying if the testimony were made available to all members of the committee.	Even if the testimony (oral or written) meets the criteria set out under the IRS rules, the activity will still count as lobbying and as a direct communication
Nonpartisan analysis and research	Your organization could present a comprehensive, accurate study or analysis of a policy issue without counting the staff time and expenses of preparing the report as lobbying as long as: (1) the document provides enough factual information to allow readers to draw their own conclusions about the issue, even if the report itself contains a specific conclusion, and (2) the report is widely distributed to the public (e.g., it is available on the organization's Website) and not shared exclusively with audiences who agree with the authors. In addition, the report may not direct readers to contact legislators about the issue. For more information on these rules, please see our publication "Being a Player: A Guide to the IRS Lobbying Regulations for Advocacy Charities."	Even if the report meets all of the criteria set out under the IRS rules, the activity would still count as lobbying if it is done for the purpose of influencing a legislative or administrative action.
Self-defense	This includes influencing legislation through direct communication with legislators that could affect the foundation's own existence, powers, duties, tax-exempt status, or right to receive tax-deductible contributions. The legislation can be either initiated by the nonprofit or in response to legislation proposed by others.	Even if the activity meets all of the criteria set out under the IRS rules, the activity would still count as either lobbying or a direct communication, if it is done for the purpose of influencing a legislative or administrative action.

CHART 6—COMPARISON OF FEDERAL TAX LAW AND CALIFORNIA LOBBBYING EXCEPTIONS *(continued)*

RELEVANT EXCEPTION	IRS LOBBYING EXCEPTION UNDER 501(h) EXPENDITURE TEST AND FOR PRIVATE FOUNDATIONS	CALIFORNIA LOBBYING EXCEPTIONS
Examinations and discussions of broad social, economic, and similar problems	It is not lobbying to meet with legislators in order to educate them about a broad social problem, as long as you do not express a preference for a specific legislative proposal to address that problem. For example, you could educate legislators about how current environmental legislation does not do enough to prevent global warming without counting it toward your federal lobbying limit, provided you do not express a preference for a specific legislative proposal to address global warming reduction. Generally, a communication to a legislator is "specific" enough to count as specific legislation if it includes enough details that a legislator could take what has been communicated and introduce a bill, even if the ideas in the communication are not fully fleshed out or do not include all pertinent details. Therefore, efforts to draft your own global warming plan should count as lobbying, even if the legislature has yet to introduce a bill.	Even if the activity meets all of the criteria set out under the IRS rules, the activity would still count as either lobbying or a direct communication, if it is done for the purpose of influencing a legislative or administrative action.

Chapter 3: Lobbying Recordkeeping and Disclosure

1. Overview of Reporting

(A) Introduction

Organizations that must file lobby disclosure reports as either a $5,000 filer or a lobbyist employer often want to know what exactly this will mean for the organization. When must the organization file reports? How it will file the reports? What will the reports contain? This chapter will address all of these questions regarding both what the nonprofit organization will need to do and what the employee or contractor that triggers lobbyist reporting obligations will need to do.

Due to the possibility of audit, it is important for organizations to keep detailed records supporting the information disclosed on their reports.

The good news is that the forms are relatively easy to complete. The organization will be required to disclose information about the organization, its policy agenda, and its expenditures in certain categories. The forms themselves are not particularly difficult, and many organizations say they can complete the forms in five-to-ten minutes. The most complicated part of the process is ensuring the organization has the appropriate systems in place to track its staff time and expenditures spent on state-level lobbying.

This publication is designed to address the most common questions facing organizations that file lobby reports. It is by no means a comprehensive overview of the reporting rules. For more information on the reporting rules, we encourage organizations to contact the FPPC.

(B) Importance of Precision

While many nonprofit organizations overestimate or round their lobbying expenses on Form 990, California law makes no provision for rounding when tracking, calculating, or reporting expenses and payments related to lobbying activity. It is thus important to keep precise records that include both dollars and cents for amounts. For example, if a lobbyist employer incurs a reportable activity expense by providing a $12.25 lunch to a state Assembly member, it must report the amount as $12.25, not $12.

(C) Audits

The FPPC has the authority to conduct two different types of audits: random and discretionary. Due to the possibility of audit, it is important for organizations to keep detailed records supporting the information disclosed on their reports. See the recordkeeping section below at Section C, page 44 for more information on CPRA's and FPPC's recordkeeping requirements and the types of documents that may be required for an audit.

(1) Random Audits

It is much more likely that an organization will be audited by the state than by the IRS. California law requires 25% of the lobbyist employers with an in-house lobbyist employee and 25% of lobbying firms to be audited at the end of every legislative cycle. Nonprofit organizations that do not have in-house lobbyists and instead only retain lobbying firms and $5,000 filers are not subject to these random audits. However, the Franchise Tax Board (FTB) can include the clients of lobbying firms as part of the lobbying firm audit. If selected for a random audit, both the organization and its in-house lobbyists are included in the audit.

In order to decide what organizations will be audited, every two years the FPPC conducts a random drawing from the eligible lobbyist employers and lobbying firms to select the 25% to be audited. The drawing occurs in February after the end of each two-year legislative cycle, and all the lobbying reports of a selected filer from the prior two calendar years are included in the audit. For example, the most recent FPPC drawing occurred in February 2011, and the audits covered all reports filed for 2009 and 2010.

Random audits are conducted by the FTB, which prepares a report detailing its findings regarding the accuracy and completeness of the covered filings and the required records. Prior to finalizing the audit, the FTB will offer the organization an opportunity to respond to any adverse or material findings, and a summary of any statements by the nonprofit will become part of the official report. The report is submitted to the FPPC, the California Secretary of State, and the California Attorney General. It also becomes a public document. If the FTB includes any materials findings, those can form the basis of an FPPC administrative enforcement action.

Generally, money spent in connection with lobbying activity is reported based on the date of payment.

(2) Discretionary Audits

In addition to the random audits described above, the CPRA authorizes the FPPC and the FTB to conduct discretionary audits[66] of all lobby filers. Lobbyist employers, lobbying firms, and $5,000 filers may be the subject of a discretionary audit.

(D) Reporting Tips

(1) Paper vs. Electronic Filing

Registrations, registration amendments and renewals, authorizations, quarterly lobbying reports, and terminations are all filed with the California Secretary of State's Political Reform Division.

Effective January 1, 2011, the e-filing threshold for quarterly reports is $2,500 per quarter. If the nonprofit stays under the $2,500 per quarter, it may paper file only. However, as a practical matter, most organizations file their reports electronically, even when not technically mandatory. The e-filing may be done for free on the Secretary of State's Website.

Registrations, registration amendments and renewals, and terminations require a combination of paper and electronic filing, as discussed below.

(2) Reporting Payments vs. Incurred Expenses

Generally, money spent in connection with lobbying activity is reported based on the date of payment. For example, if the organization distributes a grassroots lobbying communication in March and does not pay for the postage on the communication until June, it would disclose the postage payment on the organization's report due in July, rather than the report due in April. However, an activity expense is reported based on the date when it is incurred, regardless of when it is actually paid. For more information on reporting payments and expenses related to lobbying activities, see Chapter 3, Sections 2 and 3 below.

66 The FPPC and FTB do not have to follow any specific criteria when deciding when to conduct a discretionary audit. Usually, these audits are done in response to a complaint or the raising of an issue or question by the FTB.

(3) Electronic Reporting Identification Number and Password

Prior to filing the organization's first lobbying disclosure report, it must obtain an electronic reporting identification number and password from the California Secretary of State. This password must be requested by filing the Secretary of State's Electronic Filing Application Form online at www.sos.ca.gov/prd/app_and_authorization_page.htm. Plan to complete and fax this application to the Secretary of State's office in plenty of time to comply with the filing deadlines.

(E) When Are Reports Filed?

Reports are due at the end of each calendar quarter. The following table sets out the reporting deadlines for all lobbying disclosure reports. Deadlines that fall on a weekend or official state holiday are extended to the next business day.

A $5,000 filer is not required to file a report for a given quarter if it spends less than $5,000 to influence state-level legislative or administrative action.

Reporting Period	Date Report Is Due
January–March	April 30
April–June	July 31
July–September	October 30
October–December	January 31

2. Quarterly Reports for $5,000 Filers

$5,000 filers are only required to file reports in quarters in which the organization spends $5,000 for the purpose of influencing California state legislative or administrative actions.

(A) When to File

A $5,000 filer, unlike lobbyist employers, in-house lobbyists, and lobbying firms, is not required to file a report for a given quarter if it spends less than $5,000 to influence state-level legislative or administrative action, or if all its expenses in the quarter were activity expenses. All $5,000 filers report using FPPC Form 645.

(B) What Type of Information Must be Disclosed?

(1) Matters Lobbied

A $5,000 filer must report the legislative or administrative actions on which it "actively lobbied," whether directly or through grassroots activity, during the quarter.

EXHIBIT 1

PART I - LEGISLATIVE OR STATE AGENCY ADMINISTRATIVE ACTIONS ACTIVELY LOBBIED DURING THE PERIOD
(See instructions on reverse.)

AB1,AB1613,AB2244,SB853,After School Budget Item-Legislature,Budget-Legislature,Child Welfare Budget Item - Governor,Children's Health Priorities - 11/12 Budget & HCR implementation,ECE,Infant/Toddler Policy Agenda,Medi-Cal expansion and budget,Oral Heath/ - Obesity Brief,QRIS draft report,Report Card,Data Budget - Legislature

☐ If more space is needed, check box and attach continuation sheets.

(2) Activity Expenses

If your organization had any activity expenses during the quarter, you must report the expenses paid and incurred during the quarter. Once reported as incurred, an activity expense does not need to be reported again when it is actually paid.

What Is an Activity Expense?

The terms "activity expense" and "gift" are not synonymous, but they are similar concepts and are easily confused. Gifts are the most common type of activity expense. Others include consulting fees, salaries, and other forms of compensation. See Chapter 2, Section 2(F), page 13 for the full definition of an "activity expense."

Activity expenses are itemized on reports by date, the name and address of payee, name and position of reportable beneficiary, total amount, and *pro rata* amount attributable to beneficiary, along with a brief description of the expense. (See Exhibit 2.)

The terms "activity expense" and "gift" are not synonymous.

If the organization shares the cost of an activity expense with others, it is required to report the total costs of the event and the gift to each official as well as the portion paid by the organization. See the FPPC *Information Manual* for more detail on reported shared or joint events.

EXHIBIT 2

PART II - PAYMENTS MADE THIS PERIOD

A. ACTIVITY EXPENSES (See instructions on reverse.)

Date	Name and Address of Payee	Name and Official Position of Reportable Persons and Amount Benefiting Each		Description of Consideration	Total Amount of Activity
02/09/2005	Griselda's Sacramento CA 95814 Reference No: P2A1	Elaine Alquist Senator	$ 45.79	Legislative Rec - eption	$ 5585.89
	Griselda's Sacramento CA 95814	Saeed Ali Chief of Staff,Sen. Alarcon	$ 45.79	Legislative Rec - eption	$
	Griselda's Sacramento CA 95814	Juan Arambula Assemblymember	$ 45.79	Legislative Rec - eption	$
	Griselda's Sacramento CA 95814	Joe Baca,Jr. Assemblymember	$ 45.79	Legislative Rec - eption	$
	Griselda's Sacramento CA 95814	Keri Bailey Chief of Staff,Assm. Chavez	$ 45.79	Legislative Rec - eption	$

☒ If more space is needed, check box and attach continuation sheets.

TOTAL SECTION A (Activity Expenses). Also enter the total of Section A on Line A of the Summary of Payments section on page 1. $ 5585.89

(3) Campaign Contributions

A $5,000 filer must report all campaign contributions of $100 or more that it makes to a state candidate or elected state officer, the committees controlled by him, and other committees primarily formed to support or oppose him. While federal tax law prohibits 501(c)(3)s from making contributions that support or oppose a candidate for office, it may be possible for a 501(c)(3) to make a contribution to a committee controlled by a candidate that is not related to their election to office, such as a ballot measure committee, though the organization should exercise great caution before making such a payment and may want to consult with their attorney in advance. Reportable contributions must be itemized by date, recipient, and amount.

Most of the organization's expenses will be lumped together and reported on one line of the report.

(4) Other Payments to Influence

Most of the organization's expenses will be lumped together and reported on one line of the report, headed "Other Payments to Influence." The organization will disclose all lobbying expenses described in Chapter 2, Section 2, page 6 of this publication, except activity expenses as "Other Payments to Influence Legislative or Administrative Action," often referred to as OPTI. Reportable OPTI is a broad category that includes the following:

- Compensation paid to non-lobbyist employees who spend 10% or more of their compensated time in a calendar month on direct or grassroots lobbying activities (defined in Chapter 2, Section 2(D), page 10)
- Payments connected to grassroots lobbying activities including expenses for billboards and mailings
- Activity expenses and lobbying-related expenses incurred by a lobbyist where the organization pays the vendor directly
- Any other expenses that would not have been incurred but for the organization's lobbying activities, including attributable office overhead and operating expenses, payments to expert witnesses, and expenses incurred by non-lobbyist employees

Common examples of OPTI include payments for bill monitoring services, to a vendor for a lobbyist's travel expenses or conference fees, to a public relations firm for advice or services related to the organization's lobbying, to a law firm for drafting or analyzing legislation when that firm does not lobby for the organization, and for informational brochures, videos, or other material specifically designed for lobbying purposes (assuming it is done for the purpose of influencing).

When reporting OPTI, a lobbyist employer separately breaks out the amount of its payments to lobbying coalitions on Form 635.[67] The remainder of its OPTI is reported as a single lump sum.

67 If a lobbyist employer is a member of a lobbying coalition, it must also file FPPC Form 630 as an attachment to its Form 635. Form 630 requires a listing of each lobbying coalition of which the organization is a member and the amount of payments received by each coalition from the organization during the covered period, if any. This is discussed in more detail in Chapter 2, Section 2(E), page 12.

B. OTHER PAYMENTS TO INFLUENCE LEGISLATIVE OR ADMINISTRATIVE ACTION

☐ NOTE: State and local government agencies do not complete this section. Check the box and complete Attachment Form 640 instead.

1. PAYMENTS TO LOBBYING COALITIONS (NOTE: Attach Form 630.)	$ 0.00	
2. OTHER PAYMENTS	$ 14291.00	
TOTAL SECTION B (1 + 2). Also enter the total of Section B on Line B of the Summary of Payments section on page 1.		$ 14291.00

(5) Payments to Lobbying Coalitions

The organization must disclose payments to registered California lobbying coalitions. (See Chapter 2, Section 2(E), page 12 for more detail on lobbying coalitions.) These payments must be reported separately from the OPTI discussed above. If the organization makes a payment to a lobbying coalition, it must also complete and attach a Form 630 to its Form 645. Form 630 requires the organization to disclose the name of all lobbying coalitions and the amount of payment during the current quarter and the two-year legislative session.

Your organization must keep detailed financial records and substantiating documents to justify the dollar amounts and other information disclosed.

EXHIBIT 3

ATTACHMENT FORM 630
PAYMENTS MADE TO LOBBYING COALITIONS
(Attachment to Form 625 or 635)

FORM 630
1990

Period Covered 01/01/2010 Through 03/31/2010

Cumulative Period Beginning 01/01/2009

Name of Lobbying Firm or Lobbyist Employer Making Payments:
THE IRVINE COMPANY

Name and Business Address of Lobbying Coalition Receiving Payments	Amount Paid This Period	Cumulative Amount Paid Since January 1 of Biennial Legislative Session
CALIFORNIA MAJOR BUILDERS COUNCIL SACRAMENTO CA 95814	$ 10000.00	$ 20000.00

(6) Payments Connected to California Public Utilities Commission Proceedings

The California Lobbying Disclosure Law does not treat communications with the California Public Utilities Commission (CPUC) in the same way it treats communications with other agencies. Businesses and organizations appearing before the CPUC lobbied to exclude a broad range of communications and payments with the CPUC from the scope of the California Lobbying Disclosure Law. As such, only a limited range of activities before the CPUC needs to be disclosed.[68]

68 Please consult the FPPC *Lobbying Information Manual* online at www.fppc.ca.gov.

The CPUC is the only agency that is not covered under the standard lobbying disclosure laws. Organizations lobbying the CPUC should refer to the FPPC's *Lobbying Information Manual* for more information on these rules.

EXHIBIT 4

C. PAYMENTS IN CONNECTION WITH ADMINISTRATIVE TESTIMONY IN RATEMAKING PROCEEDINGS BEFORE THE CALIFORNIA PUBLIC UTILITIES COMMISSION (See instructions on reverse.) Also enter the total of Section C on Line C of the Summary of Payments section on page 1.	$ 0.00

(C) Recordkeeping

Records may be kept either electronically or on paper.

Your organization must keep detailed financial records and substantiating documents to justify the dollar amounts and other information disclosed on lobbying reports. These records must be retained by the filer for five years after the date of its final report for that calendar year. For example, records relating to a report filed for the first quarter of 2011 must be retained until January 31, 2017, since this would be five years from the date the final report is filed. The law does not dictate any particular recordkeeping system. The filer may keep a separate set of records specific to its lobbying activities, or it may use any method of maintaining records that conforms to accepted accounting principles. Records may be kept either electronically or on paper. At a minimum, we suggest organizations that file as $5,000 filers maintain a journal or similar record documenting its payments for activity expenses, other payments to influence, payments for influencing the Public Utilities Commission, and reportable campaign contributions.

What Is the *Pro Rata* Portion?
Throughout the recordkeeping portion of this publication we will refer to the "*pro rata* portion" of an expense. This simply means the portion of the expense that is attributed to lobbying or to a particular activity or beneficiary.

Although $5,000 filers are not routinely audited, if the organization is ever audited, the auditor will use these records to verify the accuracy of the expenses and receipts disclosed on reports.

The following chart summarizes a $5,000 filer's recordkeeping requirements for the various categories of reportable information.

CHART 7—RECORDKEEPING REQUIREMENTS FOR $5,000 FILERS

Payment Category	Required Information	Sample Document Types
Activity expenses	For all activity expenses incurred, paid, or reimbursed: payee name; description of goods or services; date and total amount of payment; a breakdown showing the *pro rata* portion of the total amount received by the beneficiary; name, position, and agency of the beneficiary; and total number of beneficiaries	Cash disbursement journal, restaurant or credit card receipts, invoices, canceled checks or other bank records, written vouchers, etc.
Other payments to influence (including payments to lobbying coalitions)	Payee name, date, amount, description of goods or services	Disbursement records, canceled checks, receipts, invoices, bank statements, etc.
Payments connected to California Public Utilities Commission Proceedings	Payee name, date, amount, description of good or services	Disbursement records, canceled checks, receipts, invoices, bank statements, etc.
Campaign contributions[69]	Recipient name, payee name (if other than recipient), date, amount, description of goods or services (if a nonmonetary contribution), donor name (if personally delivered by a lobbyist).	Cash disbursement journal, canceled checks or other bank records, correspondence, fundraising invitations or solicitations, etc.

When an organization triggers reporting as a lobbyist employer, it needs to file the appropriate registration statement.

(D) Quarterly Report Amendments

A $5,000 filer may amend a previously filed quarterly report by filing FPPC Form 645 with the amended information and indicating that the report is an amendment.

3. Registration Filings

When an organization triggers reporting as a lobbyist employer, it needs to file the appropriate registration statements to let the public (and the California Secretary of State) know it has met the thresholds for filing reports. This obligation to register is in addition to the obligation to file quarterly lobbying reports, as discussed below. Each registration expires at the end of every two-year legislative session, so your organization and its employees and consultants will need to re-register between November 1 and December 31 of each even-numbered year.

As of this publication legislation was pending to impose a fee of $50 on all lobbyist registrations.

The process for registration depends upon whether the organization has only a lobbying firm and contract lobbyist or if the organization also has an in-house lobbyist.

69 501(c)(3) organizations are prohibited by federal tax law from making contributions to support or oppose candidates for office.

We do not address here the process for registration as a lobbying firm, since, as discussed above in Chapter 2, Section 3(C), page 32, it is unlikely a nonprofit organization would ever be considered a lobbying firm.[70]

(A) When to File Initial Registration

The following chart summarizes the registration requirements and deadlines for each filer category.

CHART 8—LOBBYIST EMPLOYER REGISTRATION REQUIREMENTS AND DEADLINES

Filer Type	Required Filing	Filing Deadline
Lobbyist employer with in-house lobbyist(s)	Registration Statement (FPPC Form 603)	Within 10 days after an officer or employee qualifies as an in-house lobbyist
Lobbyist employer with with outside contract lobbyist(s)	File or amend Registration Statement (FPPC Form 603) Lobbying firm files Activity Authorization Form (FPPC Form 602) with its Registration Statement (FPPC Form 601)	Before lobbying activity occurs
Individual lobbyist (including in-house lobbyist)	Lobbyist certification statement (FPPC Form 604)[71]	Within 10 days of qualifying as a lobbyist
$5,000 filer	None; $5,000 filers are only required to file quarterly activity reports when applicable; they are not required to register	N/A

Nonprofits organizations and their employees or consultants who are required to register will file the necessary registration forms with the Secretary of State. First-time registrations may be filed on paper only; electronic filing is not mandatory. If your organization has both in-house lobbyist(s) *and* an outside lobbying firm, the organization must file a Registration Statement as well as a Lobbying Firm Activity Authorization. The filing fee for registering is $25. Since this registration will automatically expire at the end of the two-year legislative session, the organization and its employees or consultants are required to renew its registration between November 1 and December 31 of each even-numbered year.

An individual may register as a lobbyist prior to meeting the registration thresholds. If that person never meets those thresholds, a Notice of Withdrawal (FPPC Form 607) may be filed, which will terminate reporting obligations. In the interim, the individual will be required to file all required quarterly reports.

70 As discussed on page 17, in the situation where multiple organizations jointly hire a lobbyist, that lobbyist will become a lobbying firm. We do not discuss the details for registration as a lobbying firm here, but it is important to note that the lobbyist must register as a lobbying firm by filing a lobbying firm Registration Statement (Form 601) showing each entity as a lobbyist employer in Part II. Each organization will be required to file the lobbying firm Activity Authorizations (Form 602) as discussed in this Section.

71 An individual lobbyist's certification statement is filed as an attachment to the registration or registration amendment of the lobbyist employer, lobbying firm, or lobbying coalition that employs her.

(B) What Information Must Be Disclosed

The organization's registration form must include the name of the organization, a description of the organization, its address, and the name of the agencies the organization will be lobbying (including the legislature, administrative agencies, and the governor, if applicable), and the name of its lobbyist(s).

Registration for Affiliated Organizations

When a 501(c)(3) has an affiliated 501(c)(4), (c)(5), or (c)(6), the two entities should register as a single entity and file consolidated lobbyist employer reports.[72] The two entities are listed on the registration form as affiliated. For example, "Association of California Health Care Districts, and Affiliated Entity ALPHA" would be shown as the name of the lobbyist employer on your registration form.

The FPPC has not clearly advised when entities should be treated as "affiliated," but it is clear the two organizations will be affiliated if they share the same executive director and board of directors and one entity reimburses the other for lobbying expenses. If the two entities merely have overlapping boards of directors, it is not clear whether the two entities should be affiliated for the purposes of registration and reporting. Such organizations can contact the FPPC for advice on this matter.

(C) What Records to Keep

Organizations should keep detailed records that enable them to track when they or any of their employees reach the registration thresholds described in Chapter 2. For example, employees who participate in lobbying activities should keep timesheets or logs of the number of compensated hours they spend on direct communication and other lobbying activities. Note that not every employee of the organization needs to keep timesheets, only those employees that might trigger the thresholds for disclosure. Additionally, the organization should keep records of payments to outside consultants.

Organizations should keep detailed records that enable them to track when they or any of their employees reach the registration threshold.

(D) Registration Amendments and Renewals

From time to time, your organization may need to amend its initial registration statement. You *must* file an amendment for any change of address, adding or deleting any lobbyist, or changes in the offices or agencies it lobbies. This amendment must be filed within 20 days of the effective date of the change using FPPC Form 605.

Additionally, as mentioned above, the organization and its lobbyists (including in-house lobbyists) must renew their registration between November 1 and December 31 of each even-numbered year. If the organization or any in-house employee is not certain to meet the thresholds in the following legislative cycle, the employee can wait to file the forms until the thresholds are met, or proactively file the renewal form at the end of the legislative session. If that person never meets those thresholds, a Notice of Withdrawal (FPPC Form 607) may be filed, which will terminate reporting obligations. In the interim, the individual will be required to file all required quarterly reports.

4. Quarterly Reports for Lobbyist Employers

(A) When to File

If your nonprofit must register as a lobbyist employer, the organization must file ongoing reports, using FPPC Form 635, for each quarter in which it is registered, even if it did not lobby or make any lobbying-related payments, during the covered

72 Petersen Advice Letter, FPPC No. A-10-086; Macklin Advice Letter, FPPC No. A-86-217.

period. Reports cover a calendar quarter and are due one month after that quarter ends. We include a filing calendar in Chapter 3, Section 1(E), page 40.

(B) What Type of Information Must Be Disclosed?

Disclosing Payments from Affiliated Organizations
Where two entities are affiliated (See Chapter 3, Section 3(B), page 47), the two entities will file a consolidated quarterly lobbyist employer report. All payments by the two entities for lobbying expenses must be shown on the consolidated report. Where one entity is reimbursing the other for payments made on their behalf, the form should specify the amount of reimbursement received from the affiliated organization for each category of payment outlined below.

If your nonprofit must register as a lobbyist employer, the organization must file ongoing reports for each quarter in which it is registered, even if it did not lobby or make any lobbying-related payments.

(1) Matters Lobbied

Your organization must report the legislative or administrative actions it actively lobbied during the covered period. "Actively lobbied" means that an officer or employee of the organization (even employees and officers who are not lobbyists) or an outside lobbying firm retained by the organization either engaged in direct communication or was directed by the organization to engage in direct communication about it.[73] Actions do not need to be reported if they "die" (e.g., a bill does not get passed out of committee) in a prior reporting period or are only being watched or monitored. It is important to keep the matters lobbied up to date, rather than carrying information over from quarter-to-quarter when the organization is no longer working on the issue.

Matters lobbied may be listed by either the number of the bill or regulation or other brief description of the action. When listing state administrative actions, include the name of the state agency or department and a general description of the action (e.g., Department of Industrial Relations: nursing issues).

EXHIBIT 5

PART I - LEGISLATIVE OR STATE AGENCY ADMINISTRATIVE ACTIONS ACTIVELY LOBBIED DURING THE PERIOD
(See instructions on reverse.)

AB 30,28,40; ABX1 3,4,5; Board of Registered Nurses,Dept of Public Health,Dept of Education,Dept of Consumer Affairs,Dept of Justice - ,Dept of Corrections,Treasurer,Attorney General,Health Facilities Financing Authority,Dept of Industrial Relations: nursing issues

(2) Payments to In-House Lobbyists

Your organization must list all of its in-house lobbyists and report the following payments connected to lobbying activities made to its in-house lobbyist(s) during the covered period:

- Salaries (including gross wages and special forms of compensation such as stock options, but not routine fringe benefits such as health plan contributions, retirement plan contributions, or payroll taxes)
- Reimbursed expenses (including reimbursements for activity expenses)
- Advancements for salary expenses
- Other payments made directly to an in-house lobbyist related to her lobbying activities

73 The law does not specify what to do if the organization directs someone to engage in direct communication on a specific matter, but the communication is never made.

If an in-house lobbyist performs a combination of lobbying and non-lobbying duties, only the *pro rata* portion of his salary and expenses that are connected to lobbying should be reported. Payments to in-house lobbyists are only reported as a lump sum total. If your organization has more than one in-house lobbyist, you are not required to itemize by payment or by individual.

When Should You Disclose Employee Salary?

Since employers use a variety of pay periods for employee compensation, organizations often have questions about when to disclose salary: during the quarter in which the employee performed the work or when the salary for that work is paid? Fortunately, the FPPC staff confirmed by telephone that any reasonable accounting method is permissible, but the organization should use the same method throughout the year.

EXHIBIT 6

PART III - PAYMENTS MADE IN CONNECTION WITH LOBBYING ACTIVITIES

A. PAYMENTS TO IN-HOUSE EMPLOYEE LOBBYISTS (See instructions on reverse. Also enter the Amount This Period (Column 1) on Line A of the Summary of Payments section on page 1.)	(1) Amount This Period	(2) Cumulative Total To Date
	$ 32210.00	$ 699221.05

If an in-house lobbyist performs a combination of lobbying and non-lobbying duties, only the pro rata portion of his salary and expenses that are connected to lobbying should be reported.

(3) Payments to Lobbying Firms

This report must list each lobbying firm authorized to lobby on behalf of the organization and any payments made to that firm. The payments received by each firm must be itemized by category (fees and retainers, expense reimbursements, advancements, and "other" payments). If a particular lobbying firm did not receive any reportable payments in the covered period, zeros should be entered, though the organization must also list the cumulative payments made to the firm for the legislative session. As with in-house lobbyists, if a lobbying firm performs a combination of lobbying and non-lobbying services, only the *pro rata* portion of the payments connected to lobbying should be reported. We suggest the organization consult with its lobbying firm to ensure both the organization and the firm are reporting the same amounts.

Where Do You Report Payments to Contract Lobbyists?

If your organization has a contract lobbyist, you will disclose such payments under the lobbying firm section of Form 635 because the individual contract lobbyist must file reports both as an individual lobbyist and as a lobbying firm. A full discussion of the filing obligations for contract lobbyists and lobbying firms is outside the scope of this publication. Contract lobbyists and lobbying firms can contact the FPPC for more information on their filing obligations.

EXHIBIT 7

B. PAYMENTS TO LOBBYING FIRMS (Including Individual Contract Lobbyists)

Name and Address of Lobbying Firm/Independent Contractor	(1) Fees & Retainers	(2) Reimbursements of Expenses	(3) Advances or Other Payments (attach explanation)	(4) Total This Period	(5) Cumulative Total to Date
William J. Collins SACRAMENTO, CA 95814	0.00	0.00	0.00	0.00	49976.31

☐ If more space is needed, check box and attach continuation sheets

TOTAL THIS PERIOD (Column 4)
Also enter the total of Column 4 on Line B of the Summary of Payments section on page 1.

$ 0.00

A lobbyist employer must report all activity expenses it incurs or arranges during the covered period.

(4) Activity Expenses

A lobbyist employer must report all activity expenses (defined in Chapter 2, Section 2(F), page 13) it incurs or arranges during the covered period, regardless of when they are actually paid. Generally, activity expenses are disclosed in the same manner as $5,000 filers. The one exception to this rule is that, if the organization's in-house lobbyist pays for or incurs an activity expense and is reimbursed by the organization, or charges the expense to an account paid by the organization, the lobbyist reports the activity expense on her individual lobbyist report. An example would occur if the lobbyist met with a state senator for coffee and submitted the receipt for reimbursement or charged the drinks to the organization's credit card. The organization does not list the amount as an itemized activity expense on its lobbyist employer report; rather, it discloses it as a payment to an in-house lobbyist (see above) if it is a reimbursement, or as part of its other payments to influence if it is charged to the organization's account.

When Is an Activity Expense "Arranged" by a Lobbyist or Lobbying Firm?

A payment arranged if the lobbyist or lobbying firm when one of the following occurs:

- Delivery of a gift to the recipient
- Attendance at a meal paid for by the organization when no staff member from the organization is present during the meal
- Invitation to the recipient (e.g., if the organization hosts a policy briefing at which food and beverage will be served, and the lobbyist sends the invitations to legislators rather than the organization
- Collection of RSVPs for an event

EXHIBIT 8

C. ACTIVITY EXPENSES (See instructions on reverse.)

Date	Name and Address of Payee	Name and Official Position of Reportable Persons and Amount Benefiting Each		Description of Consideration	Total Amount of Activity
11/30/2010	The Citizen Hotel Sacramento Sacramento CA 95814	Tom Torlakson Superintendent of Public Inst - ruction-Elect	$ 72.23	Symposium	$ 12133.90
11/30/2010	The Citizen Hotel Sacramento Sacramento CA 95814	Erin Gabel Legislative Director for Torla - kson	72.23	Symposium	0.00
11/30/2010	The Citizen Hotel Sacramento Sacramento CA 95814	Rick Simpson Deputy Chief of Staff,Assemb - ly Speaker John Perez	72.23	Symposium	0.00
11/30/2010	The Citizen Hotel Sacramento Sacramento CA 95814	Lupita Cortez Alcala CDE Deputy Superintendent- Govt Affairs & Charter Dev B - ranch	72.23	Symposium	0.00
11/30/2010	The Citizen Hotel Sacramento Sacramento CA 95814	Deborah Sigman CDE Deputy Superintendent- Curriculum,Learning & Acco - untability Branch	72.23	Symposium	0.00
☒ If more space is needed, check box and attach continuation sheets.		TOTAL SECTION C (Activity Expenses) Also enter the total of Section C on Line C of the Summary of Payments section on page 1.			$ 12133.90

A lobbyist employer must report all of its other payments to influence.

(5) Other Payments to Influence

A lobbyist employer must also report all of its other payments to influence using the same definition and standard as for $5,000 filers described in Chapter 2, Section 2, page 6.

EXHIBIT 9

D. OTHER PAYMENTS TO INFLUENCE LEGISLATIVE OR ADMINISTRATIVE ACTION

☐ NOTE: State and local government agencies do not complete this section. Check box and complete Attachment Form 640 instead.

1. PAYMENTS TO LOBBYING COALITIONS (NOTE: You must attach a completed Form 630 to this Report.)	$ 0.00	
2. OTHER PAYMENTS	$ 151807.30	
	TOTAL SECTION D (1 + 2) Also enter the total of Section D on Line D of the Summary of Payments section on page 1.	$ 151807.30

(6) Payments Connected to California Public Utilities Commission Proceedings

Special rules apply to the reporting of payments made in connection with CPUC proceedings. For more information on these rules, please contact the FPPC. See page 8 for a further discussion of these rules.

(7) Campaign Contributions

A lobbyist employer must report all campaign contributions of $100 or more it makes to a state candidate, elected state officer, committees controlled by her, and other committees primarily formed to support or oppose her. While federal tax law prohibits 501(c)(3)s from making contributions that support or oppose a candidate for office, it may be possible for a 501(c)(3) to make a contribution to a committee controlled by a candidate that is not related to her election to office, such as a ballot measure committee. However, the organization should exercise great caution before making such a payment and may want to consult with their attorney in advance. Reportable contributions must be itemized by date, recipient, and amount.

Campaign contributions made from personal funds by the organization's in-house lobbyist do not need to be disclosed here. (Note: lobbyists are prohibited from making even personal contributions to the officials or agency officials for whom they are registered to lobby.)

(C) Recordkeeping

California's lobbying disclosure laws require organizations to keep detailed financial records and substantiating documents to justify the dollar amounts and other information disclosed on lobbying reports to be retained by the filer for five years after the date of its final report for that calendar year. For example, records relating to a report filed for the first quarter of 2011 must be retained until January 31, 2017, since this will be five years from the date the last report for 2011 will be filed in January of 2012. If a filer is audited, the auditor will use these records to verify the accuracy of the expenses and receipts disclosed on reports.

Although the law requires your organization to keep detailed records, it does not dictate any particular recordkeeping system.

Although the law requires your organization to keep detailed records, it does not dictate any particular recordkeeping system. The filer may keep a separate set of records specific to its lobbying activities, or it may use any method of maintaining records that conforms to accepted accounting principles. Records may be kept either electronically or on paper.

The following chart summarizes a lobbyist employer's recordkeeping requirements for the various categories of reportable information.

CHART 9—RECORDKEEPING REQUIREMENTS FOR LOBBYIST EMPLOYERS

Payment Category	Required Information	Sample Document Types
Payments to in-house lobbyists	Lobbyist's name, date, and amount	Disbursement records, canceled checks, receipts, invoices, bank statements, etc.
Payments to or for lobbying firms (including contract lobbyists)	Lobbying firm name; payee name (if other than the lobbying firm); date; amount; calendar quarter during which the lobbying services were rendered.	Disbursement records, canceled checks, receipts, invoices, bank statements, etc.
Activity expenses	For all activity expenses incurred, paid, or reimbursed: payee name; description of goods or services; date and total amount of payment; a breakdown showing the pro rata portion of the total amount received by the beneficiary; name, position, and agency of the beneficiary; and total number of beneficiaries	Cash disbursement journal, restaurant or credit card receipts, invoices, canceled checks, other bank records, written vouchers, etc.
Other payments to influence	Payee name, date, amount, description of goods or services	Disbursement records, canceled checks, receipts, invoices, bank statements, etc.
Payments connected to California Public Utilities Commission Proceedings	Payee name, date, amount, description of goods or services	Disbursement records, canceled checks, receipts, invoices, bank statements, etc.
Campaign contributions	Recipient name; payee name (if other than recipient), date, amount, description of goods or services (if a nonmonetary contribution), donor name (if personally delivered by a lobbyist)	Cash disbursement journal, canceled checks, other bank records, correspondence, fundraising invitations or solicitations, etc.

As noted above, when an in-house lobbyist or lobbying firm (including contract lobbyists) performs non-lobbying as well as lobbying duties or services, only the amounts attributable to lobbying need to be reported. An organization may consider requiring its in-house lobbyist to keep timesheets to determine the percentage of time attributable to lobbying. The organization will also want to keep records that show how that percentage was used to calculate the dollar figure reported on Form 635. For example, if your organization's in-house lobbyist spends 60% of her time on direct and grassroots lobbying in a particular calendar quarter and she earned $10,000 that quarter in reportable salary and benefits (discussed in Chapter 3, Section 2, page 40), the organization can prepare a memo specifying the employee spent 60% of her time that quarter and $6,000 of her salary is attributable to lobbying. The organization will also want to keep copies of payroll records demonstrating the employee's salary for the quarter. For contract lobbyists and lobbying firms, the organization may want either to enter into separate contracts for the lobbying activities and non-lobbying activities or at least get a written statement from the lobbying firm that documents the percentages applicable for the reporting period and the formula for determining the percentages.

An organization may consider requiring its in-house lobbyist to keep timesheets to determine the percentage of time attributable to lobbying.

(D) Quarterly Report Amendments

A lobbyist employer may amend a previously filed quarterly report by re-filing the report with the amended information and indicating that it is an amendment. You should identify the report and the section of the report being amended, along with a brief description of the changes. There is no formal deadline for amending a report; rather, the FPPC *Lobbying Disclosure Manual* simply states that amendments should be filed "as soon as practical."

5. Quarterly Reports for In-House and Contract Lobbyists

(A) When to File

An individual lobbyist, whether an in-house lobbyist employee or a contract lobbyist, must file ongoing reports, using FPPC Form 615, for each quarter in which he is registered, even if that individual did not lobby or make or incur any lobbying-related payments during the covered period. The covered periods and deadlines are the same as those for $5,000 filers and lobbyist employers described above.

Organizations must work together with their in-house lobbyist(s) to file a joint report. The organization should request a copy of any in-house lobbyist reports soon after the close of the reporting period (no later than two weeks following the end of the quarter, if possible) so the organization can attach the in-house lobbyist's report(s) as an attachment to the organization's lobbyist employer report.[74]

If your organization has a contract lobbyist, this person's reports will *not* get attached to your lobbyist employer report. Instead, as noted above, this report will get filed as an attachment to that person's lobbying firm report. You are not responsible for filing the contract lobbyists or lobbying firm report.

Often, lobbying firms and contract lobbyists will offer to help organizations complete the required lobbyist employer reports. We encourage organizations to exercise care in having an outside lobbyist help with this paperwork because your organization is ultimately responsible for ensuring the forms are filed correctly and on time.

74 If the in-house lobbyist refuses to file the report for some reason, the organization's report will be deemed incomplete and will likely get a letter from the Secretary of State about the filing. There could be a late filing fee.

(B) What Type of Information Must Be Disclosed?

(1) Activity Expenses

An individual lobbyist must report all activity expenses she incurs or arranges during the covered period in the same manner as lobbyist employers. (See Chapter 2, Section 2(F), page 13.)

(2) Campaign Contributions

An individual lobbyist must report all campaign contributions of $100 or more from the individual lobbyist's personal funds or other funds the individual lobbyist owns or controls made to a state candidate, elected state officer, committees controlled by him, and other committees primarily formed to support or oppose him (e.g., where an individual lobbyist sits on a PAC's Board of Directors or if the authority to make contributions has been delegated to the individual lobbyist). An individual lobbyist must also report all campaign contributions of $100 or more that he personally delivers to a state candidate or elected state officer.[75] A reportable contribution must be itemized by date, recipient, amount, source of funding, and donor if the individual lobbyist delivered it for another.

We encourage organizations to exercise care in having an outside lobbyist help with this paperwork because your organization is ultimately responsible for ensuring the forms are filed correctly and on time.

(C) Recordkeeping

A lobbyist must maintain a journal or similar record documenting the activity expenses she incurs or makes, as well as the reportable campaign contributions she makes or delivers. The specific information that must be recorded and sample document types are the same as for lobbyist employers. (See Chart 9.)

(D) Quarterly Report Amendments

A lobbyist may amend a previously filed quarterly report by providing Form 615 with the amended information to the lobbyist employer for filing.

6. Quarterly Reports for Lobbying Firms

Lobbying firms must file quarterly lobbying reports using FPPC Form 625. A full discussion of the rules for reporting by lobbying firms is outside the scope of this publication.

How Do I Report Compensation Received When Hired Jointly by Multiple Organizations?
As discussed in Chapter 2, Section 3(C), page 32, if an individual is considered a lobbying firm because he is jointly employed by multiple organizations, once the individual has registered as a lobbying firm, he will file quarterly lobbying firm reports (Form 625) disclosing each of the organizations as separate lobbyist employers. The amount of compensation received by the lobbyists attributable to each employer should be disclosed under "Fees and Retainers." If payments are not received directly from multiple organizations, the form should note that payments are received through his employer as an intermediary.[76]

75 A contribution is personally delivered if the individual lobbyist delivers a contribution check, a copy or facsimile of a contribution, or a copy of a contribution transmittal letter. It does not include contributions sent through the mail. Note that campaign contributions cannot be delivered in any state buildings, including the state capitol.

76 Fishburn Advice Letter, FPPC No. A-91-388.

7. Termination

(A) When to File

If an in-house or contract lobbyist or a registered lobbyist employer[77] ceases *all* lobbying activity in the middle of a legislative session, the organization must file a Notice of Termination (FPPC Form 606) within 20 days.

Depending on the circumstances, a combination of terminations and registration amendments may be required. For example, if a lobbyist employer has multiple in-house lobbyists, and only one will be ceasing activity, the employer files an amendment to its registration to delete that lobbyist, attaching the termination form for that individual.

A lobbyist or lobbyist employer that files a termination must still file a quarterly activity report covering the period through the effective date of the termination.

Registrations automatically expire at the end of each two-year legislative session. As such, if your individual or organization ceases lobbying at the end of a session and does not engage in further lobbying, you do not need to file a termination form.

Registrations automatically expire at the end of each two-year legislative session. If your organization ceases lobbying at the end of a session and does not engage in further lobbying, you do not need to file a termination form.

(B) When Not to File

A termination should be filed only when an individual or organization's lobbying activity will *completely* cease for the foreseeable future. For example, if an in-house lobbyist leaves for a different employer and will be lobbying for the new employer, the former employer should file a registration amendment but *not* a termination for that individual.

Additionally, as stated above, if an individual or organization ceases to lobby at the end of a two-year legislative session, the organization does not need to file a termination because the registration will automatically expire at the end of the session.

77 If a lobbyist employer that only contracts with an outside contract lobbyist ceases all its lobbying activity, it does not need to file a termination. Rather, the lobbying firm files an amendment to its registration to delete the lobbyist employer as a client.

Chapter 4: Additional Requirements Of Lobbyists And Lobbyist Employers

1. Introduction

California imposes some restrictions and prohibitions on in-house and contract lobbyists and lobbyist employers, but the law does not regulate how lobbying must be done. The following is an overview of some of the common restrictions and prohibitions imposed on lobbyists with an explanation of how these laws apply in California.

2. No Time Restrictions on Lobbying

The law does not regulate how lobbying must be done.

Unlike other states and jurisdictions, California does not prohibit lobbying during certain "blackout" periods (e.g., prior to an election, during a government contract bidding process). There are no time restrictions on when California state lobbying may occur.

3. No Identification Requirements When Lobbying

In some other states and jurisdictions, lobbyists must wear an identification badge or verbally identify themselves as lobbyists when engaged in direct lobbying, but there is no such requirement for California state-level lobbying.

4. Lobbyist Ethics Course

All individuals who must register as lobbyists (as discussed in Chapter 2, Section 2, page 6 and Chapter 2, Section 3, page 15) must receive ethics training at least once every two years. You can find information about this training at www.sos.ca.gov/prd/ethics_training.htm.

5. Restrictions and Limits on Gifts

All nonprofit organizations, regardless of whether they currently file lobby reports, need to be aware of the state's limitations on gifts to public officials, including local public officials. Additionally, employees registered as lobbyists and lobbying firms are subject to additional gift limits. (See Chapter 4, Section 7, page 58.)

This is one area of state law that also applies to local officials, so it is important to keep in mind that when we reference "public officials" in this chapter, we are referring to both state and local candidates, elected and appointed officials, and other staff and employees. Note that local laws may also impose additional or stricter gift limitations on officials and staff of cities, counties, and other local government agencies, such as school districts, which we will not discuss since they are outside the scope of this publication.

(A) Lobbyist-Specific Gift Limits

Lobbyists and lobbying firms are prohibited from making (either directly or by acting as an agent or intermediary) or "arranging" more than $10 in gifts in a calendar month to (1) a state candidate, (2) an elected state officer, (3) a legislative official, or (4) a state official from an agency for which the lobbyist or lobbying firm is registered to lobby. (See "Definition of Activity Expense" in Chapter 2, Section 2(F), page 13 for more information on which persons these categories cover.) Lobbyist employers, $5,000 filers, and employees of nonprofits that do not meet the definition of lobbyists are not covered by this $10-per-month limit, but remain subject to the general limits described below.

Organizations that are registered as lobbyist employers should not ask the organization's in-house lobbyist or lobbying firm to do any of the following activities, as they are considered "arranging" a gift:

- Deliver a gift to the official, even if the (c)(3) pays for the gift.
- Act as the nonprofit's representative when a gift is made, unless a non-lobbyist representative from the organization is present. For example, when a lobbyist attends a meeting at a restaurant with an official and uses the nonprofit's credit card to pay for the meal, another non-lobbyist must also attend this meeting, or the total cost of the official's meal must not exceed $10.
- Invite an official to attend an event, send an invitation to an official, or ask an official to RSVP or confirm attendance. If you want to invite public officials to attend a briefing or other event where a "gift" will be made, the nonprofit needs to have some other non-lobbyist plan and manage the guest list for the event.
- Act as an intermediary for reimbursement of a recipient's expenses. An example would be a lobbyist's suggesting that her organization donate to the travel scholarship fund of an association for state legislators that is used to reimburse those officials for their expenses when attending association events.[78]

This limit is effective during the entire time a lobbyist or lobbying firm is an active registrant and for six months after registration expires or is terminated.

This limit is effective during the entire time a lobbyist or lobbying firm is an active registrant and for six months after registration expires or is terminated.

(B) General Gift Limits

(1) Calendar Year Limits

Even if your organization does not have a lobbyist or lobbying firm, you are still subject to a calendar year gift limit.[79] No organization may make gifts exceeding $420 per calendar year[80] to a public official.

(2) Disqualification Limit

In addition to considering the annual gift limits, when planning to make a large gift to a public official (e.g., offering an official a round of golf during your annual golf tournament fundraiser), your organization may also want to consider the state "disqualification" rules. A public official cannot participate in any government decision that affects a donor that has given him more than $420 in gifts in the 12-month period prior to the decision.

While the calendar year and disqualification limits seem similar, they are not completely duplicative. It is possible to comply with the calendar year limits but still exceed the disqualification limit. For example, if a donor gives a city councilmember $250 in gifts in December 2011, and another $250 in gifts in January 2012, it has not exceeded the calendar year limits, but it has disqualified the councilmember from participating in a government decision affecting the donor until the end of December 2012.

78 Leonard Advice Letter, FPPC No. I-93-170.

79 State law allows local jurisdictions, including cities and counties, to adopt gift limits that are lower than the state limit. Prior to making a gift to a local official, the organization may want to confirm the gift limit in the official's jurisdiction.

80 As noted below, this limit is adjusted for inflation every two years.

(3) Adjustment of Limits

The dollar amount of the calendar year and disqualification limits is adjusted every two years to account for inflation. The $420 limits are effective through December 31, 2012.

6. Gift Disclosure and Notification

(A) Gift Disclosure by Public Officials

In addition to an organization's obligation to comply with the gift limits, it should also know that a public official may need to disclose having received a gift. Most public officials in California are required to file an FPPC Form 700, known as a Statement of Economic Interests or SEI. If the gift exceeds a certain value and the donor falls within the recipient's "disclosure categories," the public official will have to publicly disclose the gift on her Form 700.

California law includes numerous, complex exceptions and rules for how to value a gift.

(B) Gift Notification by Donors

If an organization that files lobbying reports as a lobbyist employer or a $5,000 filer gives a gift to a public official, it must send a written notice to the recipient specifying the date and amount, along with a brief description of the goods or services provided. This notice must be sent within 30 days after the end of the calendar quarter in which the gift was made.[81]

It is generally good practice for any organization, even if it is not a lobbyist employer or $5,000 Filer, to send gift notifications, particularly for gifts that can be hard to value (e.g., free attendance at events). This helps public officials comply with their gift disclosure obligations and protects the organization by ensuring the recipient reports the gift value accurately.

7. Gift Valuation Rules and Exceptions

California law includes numerous, complex exceptions and rules for how to value a gift. A full discussion of these rules is beyond the scope of this publication,[82] but we briefly describe some of the most common gift situations encountered by nonprofit organizations below. The following gift valuation rules and exceptions apply to lobbyists, lobbyist employers, and lobbying firms.

(A) Admission to Nonprofit Events

As part of lobbying, outreach, and community building efforts, nonprofit organizations often offer public officials tickets or free admission (and other related benefits, such as meals and beverages) for events such as nonprofit fundraisers, sports games, and concerts. Generally, free admission to this type of event will be considered a gift to the public official, but there are various exceptions that allow the organization to avoid making a gift or reduce the gift's value. The gift value of entertainment is generally the fair market value of the benefits received, but special valuation rules apply for nonprofit fundraisers and other "invitation-only" events.

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81 Technically the organization is only required to send this notice once the organization has made gifts totaling $50 for the calendar year, but many organizations choose to provide this notice for even smaller value gifts as a way to develop relationships with officials and to allow officials that have policies against accepting gifts to refund the organization for the value of the gift.

82 For example, the FPPC recently created a number of new exceptions, including gifts exchanged between friends and family members, wedding gifts, and home hospitality. (2 Cal. Code of Regs. 18940.)

(1) Nonprofit Fundraisers

Giving a public official admission to a nonprofit fundraising event may be considered a gift to the official. The FPPC has created an exception that reduces or eliminates the gift value when a nonprofit gives a public official a ticket (or pass or similar "admission privilege" such as a table seat) for its own fundraising event.

When Admission to Nonprofit Fundraising Event[83] Will Not be Considered a Gift

A 501(c)(3) organization can give two tickets to a charitable fundraising event for free to a public official without the value of the tickets being considered a gift. The organization is not limited to two tickets per year; it can provide an official with two free tickets to each of its fundraising events. It would be considered a gift if the nonprofit wants to provide additional tickets beyond the first two per event, or if a third party not associated with the nonprofit wants to purchase tickets to the event and invite the official to attend.

Giving a public official admission to a nonprofit fundraising event may be considered a gift to the official.

Example: Your 501(c)(3) organization holds its annual fundraising luncheon and invites your local state senator to attend. The senator gladly accepts your invitation and asks to bring two of her staff members from her district office. The senator's admission and the admission of one of her staff members would not be considered a gift; however, the free admission of the additional staff member would be considered a gift and would be valued pursuant to the rules discussed below.

Example: One of your 501(c)(3)s donors purchases a table at your fundraising event and invites your local state senator to attend. The senator gladly accepts the donor's invitation. Under this example, the senator's admission to the event would be considered a gift from the donor and would be valued pursuant to the rules discussed below.

How to Value Admission to Nonprofit Events

If the exception above for nonprofit fundraising events does not apply (e.g., if a third party purchases a ticket for a public official to attend a fundraising event, the nonprofit wants to offer more than two tickets to a public official, or the event is for a nonprofit that is not a 501(c)(3) organization), the organization will need to determine the appropriate value for the gift.

If the event ticket has a price or face value and the ticket clearly specifies that a portion of the ticket is a donation to the nonprofit,[84] the remainder (i.e., the amount that cannot be deducted as a charitable donation for tax purposes) is considered a gift to the official.

83 Similar rules apply to tickets to political fundraising events; however, these rules are outside the scope of this publication.

84 501(c)(3) organizations are required to disclose what portion of the payment is tax deductible whenever any goods or services are provided in exchange for the donation. (IRS Publication 1771.)

If the ticket does not have a price or face value or a clearly identified donation portion, the value of the gift is the recipient's *pro rata* share of any food, catering services, entertainment,[85] and any other item provided to the official that is available to all guests attending the event.[86] This allows the organization to exclude from the value of the gift some of the more expensive parts of an event, including the facility rental fees, and decorations. To arrive at the *pro rata* share, the organization needs to divide the costs by either the number of positive RSVPs or the number of people who actually attend.[87]

Example: Your 501(c)(4) organization holds monthly fundraising luncheons in 2012. A luncheon ticket costs $100, $30 of which is identified as a donation to your organization; the remaining amount covers food and beverages at the event. Every month, you offer a free ticket to your local city councilmember to attend the luncheon, and she regularly attends. The official can attend the events for free from January through June (6 tickets x $70 non-deductible portion per ticket = $420), but no further luncheon tickets can be given to the city councilmember after June because the organization has reached the annual gift limit for that official.

An organization can invite a public official to perform a ceremonial function at an event without the entire cost of the event being considered a gift to the official.

(2) "Invitation-Only" Events

A nonprofit may provide a public official and her guest with free attendance at an "invitation-only" event (e.g., a banquet, party, gala, celebration, or similar function that is not a nonprofit fundraiser) and value the free admission using the same rules for 501(c)(3) fundraising events discussed above. Note that this special valuation rule applies only to the official and one guest and does not apply where the event is sponsored by a lobbyist, lobbyist employer, or lobbying firm. For any additional tickets and events sponsored by lobbyists, lobbyist employers and lobbying firms, the organization must instead calculate the value of the gift based upon a *pro rata* share of all costs associated with the event, such as food, drinks, facility rental fees, decorations, entertainment, as well as anything of value provided to all attendees.

Inviting Elected Officials to Attend Nonprofit Events is Permitted Under Federal Tax Law

During election season, candidates are among our most high-profile public figures. Having a candidate appear as a speaker at a 501(c)(3) organization's event can help improve turnout, whether to hear an educational message or to raise funds for the organization's programs. At other times, the 501(c)(3) may be interested in inviting the individual for reasons unrelated to the candidacy, such as because she is an incumbent in a public office who makes decisions affecting the 501(c)(3)'s area of interest, or because she has special expertise in those areas. Nonprofit organizations, including 501(c)(3)s, can invite individuals (who happens to be candidates) to appear at a charitable event for reasons unrelated to his or her candidacy for office. For more information on these rules, please view our fact sheet on Candidate Appearances.

85 The term "entertainment" means a feature show or performance intended for an audience, and does not include music provided for background ambiance. (2 Cal. Code of Regs. 18946.2.)
86 Any other special benefit provided only to the official is valued based upon the fair market value.
87 2 Cal. Code of Regs. 18946.2.

(3) Ceremonial Function at Invitation-Only Events

An organization can invite a public official to perform a ceremonial function at an event without the entire cost of the event being considered a gift to the official. A ceremonial function is where, for a period of time, the focus of the event is on the act performed by the official, including throwing out the first pitch at a baseball game; cutting a ribbon at an opening; making a presentation of a certificate, proclamation, award, or other item, such as the key to the city. If the official performs a ceremonial function, the value of the gift is the *pro rata* cost of any meal provided to the official and her guest, plus the value of any specific item that is presented to the official and his or her guest at the event.[88] Note that local jurisdictions can adopt a definition of a ceremonial function that is narrower than described here, and if the organization wants to invite a local official to perform a ceremonial function, the organization should first consult with the local jurisdiction to make sure the official's role falls within these rules.

(4) Drop-In Attendances

If the public official only pays a "drop-in visit" at the event (i.e., only receives minimal appetizers and drinks and does not stay for a meal or entertainment), the gift value is reduced to just the cost of any food and beverages provided to the recipient and his accompanying guests, plus the value of any other specific item received by the recipient at the event. However, as of the time of this publication the FPPC is proposing to change the 'drop in rule' regulation so that beverages and minimal appetizers will not count towards the gift value.

If the public official does not consume any food or beverage at the event, his attendance at the event will not be considered a gift. You will need a way to track which officials do not consume food or beverages at the event, such as by including a sign-in sheet that allows attendees to specify whether they intend to consume any food or beverages. If the event is sponsored by a lobbyist, lobbyist employer, or lobbying firm, in order to qualify for the "drop-in" visit rule, the public official must provide the organization with notice in writing that the official did not stay for any meal or entertainment, and that the official received only minimal appetizers and drinks.[89]

If the public official does not consume any food or beverage at the event, his attendance at the event will not be considered a gift.

(B) Travel

Nonprofit organizations frequently provide or pay for travel expenses related to a public official's attendance at an event (e.g., a tour of a facility or to introduce the official to the organization's constituents).

(1) Travel from a 501(c)(3) Organization

While travel expenses are generally considered gifts, in recognition that charitable organizations often want to provide transportation and related lodging and subsistence for legislative briefing trips, the law creates a special exception for trips that are reasonably related to a legislative purpose, governmental purpose, or an issue of state, national, or international public policy. For example, this exception would apply to payments by a 501(c)(3) nonprofit for transportation and hotel to send a California mayor to attend an overseas conference as the

88 2 Cal. Code of Regs. 18946.2.

89 2 Cal. Code of Regs. 18640.

representative of a national association of city governments to hear presentations on state water policy.[90]

Under this exception, travel payments will not count toward the calendar year limits. *However*, the payments are still considered gifts that count toward the disqualification limit and must be reported by the official on her Form 700 statement of economic interests. (See Chapter 4, Section 7, page 58 for a discussion of these rules.)

(2) Speeches

California law prohibits lobbyists from accepting or agreeing to payment that depends on the outcome of their lobbying activities.

Your organization can pay for travel expenses[91] for certain officials to give speeches, including participating on a panel or making a substantive formal presentation at a seminar, conference, or similar event, without this being considered a gift to the official. The officials subject to this exception are legislative staff, appointed agency officials, and staff of agencies, *but not* state or local elected officials. The organization can also pay for travel for state or local elected officials, but these payments are considered gifts to the officials subject to the gift limits.

This exception is not limited to 501(c)(3)s, but in order for the exception to apply, the "speech" must be for official agency business, and the recipient must be representing the agency as part of her official duties. For example, the exception would apply when an organization pays for a hotel room and meals for an appointed city arts commissioner on the day she participates in her official capacity in a panel discussion at an educational forum related to the arts.

Unlike the 501(c)(3)-specific travel exception described above, payments that fall under the "speech" exception are not considered gifts and are not reportable by the recipient and do not count toward either the calendar year or disqualification limits and do not need to be reported as activity expenses on the organization's lobbying report.

Payment of Fees and Honorarium for Speeches is Prohibited
Although the organization can pay for the public official's travel costs, the organization cannot pay a fee or honorarium to the official in exchange for her speech.[92]

8. Lobbyist Prohibition for Campaign Contributions

California law prohibits lobbyists from making certain campaign contributions, even if using personal assets. Specifically, if a nonprofit's lobbyist is registered to lobby a particular state agency, she cannot make a personal contribution to elected state officials that hold, or state candidates running for, an office in that agency. The lobbyist also cannot contribute to any state or local campaign committees controlled by those officials and candidates (such as a local ballot measure committee or legal defense fund), or any other campaign committee that is primarily formed to support or oppose those officials or candidates.

90 Ross Advice Letter, FPPC No. A-10-082.

91 Including (1) event admission fees, (2) lodging, food, and beverages provided on the day before, day(s) of, and day immediately after the "speech," and (3) other connected "nominal non-cash benefits," such as a conference "goody bag" that is provided to all attendees.

92 2 Cal. Code of Regs. 18623, 18930.

This prohibition also extends to any lobbying firm or other business that the lobbyist partially or wholly owns (such as a private consulting firm or even a family business) and to any campaign committee that the lobbyist contributes money to *if* the lobbyist participates in the PAC's contribution decisions. For this reason, it is uncommon for lobbyists to serve on the board of directors for a PAC.

A lobbyist is allowed to advise his clients or employer on contributions.

9. Prohibition on Contingency Fee Lobbying

California law prohibits lobbyists from accepting or agreeing to payment that depends on the outcome of their lobbying activities. In other words, your nonprofit could not hire a lobbyist to oppose a bill if she were to be paid only if the bill were defeated.

10. "Revolving Door" Rules

California law contains two types of "revolving door" rules that restrict the ability of state and local officials and employees who leave or are planning to leave government service to lobby.

California law contains two types of "revolving door" rules that, in certain circumstances, restrict the ability of state and local officials and employees who leave or are planning to leave government service to lobby. These rules have exceptions, vary depending upon the position held, the matter, and government agency being lobbied, and applying them can be factually complicated. A full discussion is beyond the scope of this publication, but we summarize these rules briefly below.

(A) One-Year Bans

(1) State Officials and Employees

Former state legislators cannot, for compensation, lobby either the state senate or assembly or any of their committees or subcommittees or individual members, officers, or employees for one year after leaving office.

Former elected state officials other than legislators cannot, for compensation, lobby any state agency or their individual officers or employees for one year after leaving office.

Certain other former state officers and employees cannot, for compensation, lobby their former state agency or any of its individual officers or employees for one year after leaving government service.

(2) Local Officials and Employees

Former local elected officials, county chief administrative officers, city managers, and special district general managers or chief administrators cannot, for compensation, lobby their former local agency or any of its committees or subcommittees or individual members, officers, or employees for one year after leaving government service.

(B) Permanent Ban

Former members, officers, employees, and consultants of a state executive branch agency are permanently barred from lobbying, for compensation, on certain state proceedings in which they participated in their former official capacity.

(C) Prospective Employers

State and local officials and employees cannot make, participate in, or influence a governmental decision that relates directly to a prospective employer.

Chapter 5: Impact Of California Law On Grantmaking Public Charities And Private Foundations

Foundation support for advocacy is an investment that can lead to systemic change, allows a foundation to leverage the impact of available funds, strengthens the voice of the underrepresented, and provides policymakers with the information they need to know. Foundations, like other nonprofits, may lend their expertise to the policy debates in perfectly permissible ways. They can support organizations that carry out advocacy activities, and they can engage in certain types of advocacy activities themselves.[93]

Foundations can support organizations that carry out advocacy activities, and they can engage in certain types of advocacy activities themselves.

The Internal Revenue Service (IRS) rules regulate how foundations can engage in or fund advocacy, and the IRS rules vary according to the type of entity and the nature of the advocacy activities. By comparison, California law simply requires reporting of certain lobbying activities.

1. Advocacy by Private Foundations

A private foundation is a 501(c)(3) organization supported by one or few individuals or sources. Under the IRS rules, private foundations may participate in advocacy. Although they incur a prohibitive tax on any lobbying expenditures, lobbying is only one type of advocacy. There are many types of non-lobbying advocacy in which private foundations may legally engage, including:

- Discussing broad issues, without mentioning specific legislation
- Building relationships with legislators and helping grantees build and sustain relationships
- Convening nonprofits and decision makers to discuss broad issues
- Educating legislators about broad issues
- Conducting public education campaigns that do not include calls to action or mention of specific legislation
- Regulatory efforts
- Providing "technical advice or assistance" to the California legislature or a committee or subcommittee of the legislature
- Distributing certain nonpartisan analyses, studies, or research reports
- Engaging in self-defense lobbying

For more information on how private foundations can engage in advocacy activities, please consult our Website at www.bolderadvocacy.org.

2. Advocacy by Public Foundations

Public foundations are publically supported charities that make grants to support the charitable activities of other organizations. Public foundations are subject to far fewer restrictions than private foundations. They can do everything that private foundations can and lobby up to their lobbying limits.

93 For more information on how foundations can engage in advocacy and support grantees that advocate for change, see our publication "Investing in Change."

3. How the California Law Will Impact Advocacy or Grantmaking by Foundations

(A) Introduction

California law does not distinguish between the tax-exempt statuses of organizations. As such, private foundations and public foundations must comply with California's lobbying disclosure laws in the same way a public charity would. Private and public foundations, therefore, may need publically to disclose attempts to influence California legislative or administrative actions if they meet the thresholds discussed in Chapter 2. Being considered a lobbyist or lobbyist employer under California law has no bearing on the organization's 501(c)(3) status.

(B) Activities of Foundation Employees or Consultants that Might Trigger $5,000 Filer Status or Lobbyist Employer Status

Private and public foundations must comply with California's lobbying disclosure laws in the same way a public charity would.

As set out in Chapter 2, Section 2, page 6 above, if an employee of an organization (including private or public foundation) spends a significant amount attempting to influence a legislative or administrative action, the foundation may need to report the compensation and expenses of this employee. (See "$5,000 filer" in the Definitions Section).

Please note the time of non-compensated foundation board members engaged in such lobbying activities is not counted in this calculation.

Example: An employee of your foundation spent 15% of her compensated time in March meeting with the head of the health and human services agency to discuss regulations to implement the new health care reform law. Because she is attempting to influence agency regulations, a *pro rata* portion of her salary for the month of March would need to be reported if her total compensation and related expenses were $5,000 or more for the quarter. Note that in calculating her time, she would want to include preparation time, travel time, meetings, and other communications, if such activities were engaged in for the purpose of influencing legislative or administrative action. She would include more than just time spent making direct communication. (See Chapter 2, Section 2, page 6.)

Example: Another employee of your foundation spends 8% of his compensated time in the calendar month on meetings with the health and human services agency. This employee's time would not be factored into the $5,000 reporting threshold since it is less than 10% of his time for the month. Nonetheless, the lobby-related travel and other expenses for this employee would be potentially reportable and count toward the $5,000 filing threshold.

Overcoming Fears About Lobby Disclosure Reporting
Because of the prohibitive tax on lobbying activities imposed by the IRS, many private foundations are concerned about needing either to register as a lobbying entity or to file a $5,000 filer report. While the foundation may be lobbying under California law, it is not lobbying under federal tax law. In order to alleviate some of these concerns, some private foundations include this statement on their lobbying forms: "No specific bills lobbied during session; funded advertising and civic engagement activities to raise awareness amongst the public and policymakers about the importance and urgent need for action to reform the health care system; did not fund activities that are prohibited under the IRS lobbying rules."

Example: Your foundation hires a consultant to help you make contacts with the Department of Agriculture on new regulations that will require shade and cold water for farm workers during meal breaks. The contract with this consultant is for $2,500 per month for the purpose of making direct communication. Since the foundation is paying the consultant more than $2,000 in a calendar month, the

consultant is a lobbyist, and the foundation is a lobbyist employer. See Chapter 2 for more information.

(C) Grantmaking Activities that Might Trigger $5,000 Filer Status or Lobbyist Employer Status

At times a foundation's grantmaking activities may require the foundation to file reports under California's lobbying disclosure laws. The FPPC has not addressed the reporting obligations of public and private foundations for making grants, though it has issued several advisory opinions to 501(c)(6) organizations that make grants to organizations that lobby. If a foundation makes one or more grants partially or wholly designated for the grantee to attempt to influence a legislative or administrative action in California, the funds designated for this purpose may count towards the foundation's need to file a report as a $5,000 filer.

At times a foundation's grantmaking activities may require the foundation to file reports under California's lobbying disclosure laws.

(1) General Support Grants

Since the FPPC has yet to address how a public or private foundation can make a general support grant without treating the grant as lobbying, many attorneys rely upon advice the FPPC gave to a 501(c)(6) trade association in determining whether the grant should be treated as lobbying. Under this guidance, if the foundation makes a general support grant that is not earmarked to pay for lobbying activities, since the grant may nonetheless be used by the grantee (in whole or in part) for lobbying, the FPPC has advised that the foundation should count the grant toward the $5,000 filer status if the foundation is "aware that grant funds to some grantees will be used for the purpose of influencing legislative and administrative action."[94]

The FPPC has not given any advice about what facts the foundation would need to know about the grantee's proposed activities in order to be "aware" the grant funds will be used for lobbying or whether this knowledge must be actual knowledge or constructive knowledge. However, it would seem that simply having knowledge that the grantee has lobbied in the past on its own should not be enough to meet this standard. This is especially true for a private foundation that makes a general support grant to an organization, as these types of grants do not allow the foundation and grantee to have any agreement about how the grant funds should be spent.[95] Foundations concerned about these rules can contact the FPPC for additional guidance.

Example: The foundation offers a general support grant to a grantee that is not a registered lobbyist, but works on a number of state policy issues, including attempting to influence state regulations on the implementation of AB 32. The foundation and the grantee do not have any discussions in advance (nor does the foundation have other knowledge) about for what the funds would be used. The foundation should not need to count the grant funds toward the $5,000 filer threshold.

Example: The foundation offers an environmental organization a general support grant that does not earmark grant funds to pay for lobbying activities. The foundation is aware that the grantee will use the funds to defray staff costs

94 Muller Advice Letter, FPPC No. A-92-229.

95 26 CFR Section 53.4945-2(a)(6)(i).

associated with the grantee's work to influence a number of CAL-EPA regulations. The foundation could be considered to be "aware" that its grant funds will be used for the purpose of influencing legislation or administrative action, and the grant could count towards the foundation's $5,000 filer threshold.

(2) Specific Project Grants

The FPPC has never given guidance about how to treat specific project grants, where some portion of the grant will be used to influence a legislative or administrative action, as that term is defined under California law. Most lawyers believe that grants not expressly or implicitly designated to influence a legislative or administrative action should not trigger lobby reporting requirements for a foundation, even if the grantee, pursuant to its own decision, uses some or all of the grant for this purpose. However, if the foundation is the sole funder to a grantee for the project, most lawyers surveyed believe the grant should be treated as a payment made for the purposes of influencing a legislative or administrative action under California law.[96] There is no clear guidance as to what portion of the grant should be counted towards the $5,000 filer threshold, and AFJ has requested that the FPPC clarify this in the regulations. In contrast, if the project were funded by multiple organizations, there is a stronger argument the foundation would not be making the payment for the purposes of influencing a specific legislative or administrative action under California law.

If the foundation is the sole funder to a grantee for the project, most lawyers surveyed believe the grant should be treated as a payment made for the purposes of influencing.

Example: Your foundation gives a specific project grant for a public information campaign about the importance of preserving wildlife habitats. Part of this public information campaign will include a direct mail campaign that will encourage members of the public to contact the California Resources Agency to encourage the agency to add the nearly extinct Franciscan Manzanita to the California Endangered Species List. Your foundation is the sole funder for this project. Although only a part of this project includes attempts to influence a state legislative or administrative action, since a part of the project funds will be used for this purpose, the foundation should count this grant toward determining whether the foundation must file as a $5,000 filer.

Example: Your foundation gives a grant for a specific project grant for a public awareness campaign on the importance of getting HIV/AIDS tests. In addition, the project intends to influence legislation by asking the California Legislature to appropriate more money in the budget to cover HIV/AIDS testing for low income communities. This nonprofit is seeking a $100,000 grant for this project, of which it has budgeted $80,000 for the public awareness campaign and $20,000 for lobbying the legislature. The foundation reviews the nonprofit's budget and gives the nonprofit an $80,000 specific project grant. The foundation should not need to count this grant toward its $5,000 filer status because there is no reason any of the grantees lobbying must necessarily be paid for from the proceeds of the foundation's grant.

Whenever your foundation makes grants to a charity (or multiple charities) or enters into a contract with a charity specifically so that grantee can make contacts on the foundation's behalf, it will be important for the foundation to look at all of

96 Just because a payment is deemed to be made for the purpose of influencing legislative or administrative action, it does not mean the grant will be considered "earmarked" for lobbying under the IRS rules.

the facts when making a decision about the foundation's reporting requirements. It is possible that making payments to a charity either as a grant or contract could trigger reporting as a $5,000 filer.

For additional examples of how to determine if your foundation meets these thresholds, see Chapter 2 of this publication.

Chapter 6: Where To Go For Additional Help?

Because your lobbying activity is regulated by a variety of government agencies, you may not always know where to go for help. One good starting point is Alliance for Justice's West Coast Office, which is available to offer technical assistance on the state's lobbying rules, by calling (510) 444-6070. Or you can contact the state agencies directly.

(1) Does my organization need to file lobbying disclosure forms? You can try calling the FPPC's toll-free advice line at (866) ASK-FPPC (1-866-275-3772).

(2) My organization has to file reports disclosing our lobbying activities. How do we fill out the reports? One good starting point for this question is to review the FPPC's *Lobbying Disclosure Manual* online at www.fppc.ca.gov/index.html?ID=506

(3) When is my next lobby report due? The FPPC keeps information about the upcoming filing deadlines on its Website at www.fppc.ca.gov/index.html?id=25.

(4) What do the lobbying forms look like? Samples of all lobbying forms, along with a brief description of the purpose of each form, is available at www.sos.ca.gov/prd/lobbying_info/forms_instructions/compend_lob_forms.htm

(5) How do I get started with filing my organization's lobby reports? You can learn all about the Secretary of State's free electronic filing software and apply for an electronic filing password at www.sos.ca.gov/prd/electronic_filing_info.htm

(6) How can I learn about changes in the law? The FPPC posts proposed changes in the law on its Website at www.fppc.ca.gov/index.html?ID=247#2. Additionally, you can sign up at www.bolderadvocacy.org to receive updates on changes in the law impacting your lobby reporting obligations.

(7) Am I required to take any sort of training prior to lobbying? No, although all individuals that must register as a lobbyists (as discussed in Chapter 2, Section 3, page 15) must take an ethics training at least once every two years. You can find information about these trainings online at www.sos.ca.gov/prd/ethics_training.htm.

(8) How can I find out what other organizations are spending on lobbying in California? The Secretary of State's Cal-Access Website provides a searchable database that allows anyone to access the names and financial activity of organizations that are registered to lobby (as well as the names of the lobbyists themselves) at cal-access.ss.ca.gov/lobbying. This means that anyone can access information on who is a registered lobbyist in California, and that once a nonprofit triggers lobbying reporting requirements, its lobbying reports are publicly accessible. If you have questions on how to search the database, please contact AFJ's West Coast Office by calling (510) 444-6070.

(9) How do I find out if my organization has been selected for a random audit? Results from the FPPC's most recent audit draw are available online at www.fppc.ca.gov. For a longer discussion of audits, see Chapter 3, Section 1(C), page 38.

(10) My organization has been selected for audit. What do I do? The FTB is responsible for conducting audits of lobbying entities. If you have been selected for audit, they will contact you about how and when they will conduct this audit. If you have any additional questions, you can call the department at (916) 845-4829.

(11) I inadvertently filed my lobby report a few days late. What do I do? The Secretary of State will likely send you a letter that includes a fine for late filing penalties ($10/day late). You will have an opportunity to request a waiver of these penalties. Reasons for waiving the penalty can be found online at www.sos.ca.gov/prd/campaign_info/filing_requirements/waiver_good_cause.htm.

(12) I believe an organization opposing our efforts should be registered to lobby, but I have confirmed they are not. What can I do? You can file a complaint with the FPPC using the complaint form available at www.fppc.ca.gov/index.html?id=42. This form does not allow you to file an anonymous complaint. If you would like to file an anonymous complaint, you will have to call the FPPC directly at (866) ASK-FPPC (1-866-275-3772).

Alliance for Justice provides low-cost and free resources related to nonprofit advocacy thanks to the generous support of foundations, organizations and individuals. If you would like to support our work, please donate online at our website, www.afj.org, or call 866-675-6229.

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