

California Fair Political Practices Commission

Fact Sheet: Other Payments to Influence

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

New Reporting Requirements (Regulation 18616)

Effective July 1, 2016, lobbyist employers and persons spending \$5,000 or more to influence legislative or administrative action (“\$5,000 filers”) are required to provide more detailed disclosure of “other payments to influence legislative or administrative action” in their quarterly lobbying reports. “Other payments to influence” include payments for or in connection with:

- Support or assistance of lobbyists;
- Direct communication with a legislative, agency, or elected state official for the primary purpose of influencing legislative or administrative action;
- Soliciting or urging persons other than the filer or the filer’s employees to enter into direct communication with a legislative, agency, or elected state official for the primary purpose of influencing legislative or administrative action; (Regulation 18616(a)(4).) and
- Expenses which would not have been incurred but for the filer’s activities to influence or attempt to influence legislative or administrative action. (Regulation 18616(f)(1)(B)(iii).)

The new rules, applicable to third-quarter lobbying reports due by October 31, 2016, require filers to:

- Provide more detailed disclosure for “other payments to influence.” Employers are already required to track and maintain detailed records of this information (Regulation 18615(a)(4)), but it is not currently disclosed to the public.
- Itemize “other payments to influence” on Form 640 (currently used by state and local government agencies) as an attachment to the Lobbyist Employer Report (Form 635) or \$5,000 Filer Report (Form 645) required under Government Code Section 86116.
 - **State and local government agencies** must continue to itemize payments totaling \$250 or more made to a single payee, vendor, or person during the calendar quarter.
 - **All other lobbyist employers and \$5,000 filers** must itemize payments totaling \$2,500 or more made to a single payee, vendor, or person during the calendar quarter.

Filers are encouraged to contact the Fair Political Practices Commission (“FPPC”) at advice@fppc.ca.gov for specific questions, including questions regarding their filing status.

Who Must File

All lobbyist employers and \$5,000 filers currently file quarterly reports disclosing payments in the following categories: (1) payments to lobbying firms, (2) payments to lobbyists, (3) activity expenses, and (4) other payments to influence legislative or administrative action. (Section 86116.) The new reporting requirements apply to lobbyist employers and \$5,000 filers that disclose payments under “other payments to influence legislative or administrative action.”

- **Lobbyist Employer:** A person, other than a lobbying firm, who employs a lobbyist or contracts with a lobbying firm for economic consideration for the purpose of influencing legislative or administrative action.

- **\$5,000 Filer:** A person who does not employ a lobbyist or contract with a lobbying firm but who makes payments to influence legislative or administrative action (including payments to a lobbying coalition) aggregating \$5,000 or more in a calendar quarter.

Required Forms

Persons who qualify as lobbyist employers or \$5,000 filers must complete **Attachment Form 640 – Reporting of Other Payments to Influence Legislative or Administrative Action**. **This form must be filed as an attachment to Form 635** (lobbyist employers) or **Form 645** (\$5,000 filers).

Reporting and Itemization

The filer must disclose the following on the Form 640:

- The name and business address of the payee;
- The total payments made during the reporting period;
- The cumulative amount paid during the calendar year;¹ and
- A payment code to describe the primary purpose of the payment.

Use of Payment Codes

A filer must use a specified payment code [in brackets] to identify the **primary purpose** of the itemized payment of \$250 or more made by state and local government agencies, or payments of \$2,500 or more made by all other lobbyist employers and \$5,000 filers. The filer must use the code that best identifies the main activity or purpose for the expenditure. For instance, if a filer hires a consultant to conduct a grassroots campaign, do polling, or purchase advertising, the filer reports the payment code for the primary purpose of the expenditure (e.g., [P] for grassroots campaign, [R] for polling, or [A] for advertising, not the payment code for consultant).

EXAMPLES:

- A lobbyist employer paid a firm \$100,000 to develop television, newspaper, and electronic commercials urging the public to contact their legislator to support a crime bill. A portion of that fee (\$10,000) was for consulting fees for public affairs strategy and advocacy. The total expenditure amount would be reported using the payment code [A] for an “advertising” expenditure as the primary purpose of the payment was for commercial spots.
- A \$5,000 filer paid a political consulting firm \$200,000 for polling and public opinion research regarding a minimum wage bill, with a small portion of the fee (\$20,000) for political advocacy and strategy. The filer would use the payment code [R] indicating the primary purpose of the expenditure was “research.”

The payment codes are categorized as follows:

- i. **Salary – [S]** Compensation of employees, other than lobbyists, who are engaged for 10% or more of their compensated time in one month in activities related to lobbying, such as engaging in direct communication with a legislative, agency, or elected state official, or providing analysis, research or support or assistance to a lobbyist and expenses of employees related to influencing legislative or administrative action;

¹ The rules requiring more detailed disclosure are effective July 1, 2016, so for reports filed in 2016, the cumulative amount paid during the calendar year only needs to include amounts paid on or after July 1, 2016. All reports filed after 2016 must include payments from January 1 of that calendar year in the cumulative amount.

- ii. **Lobbyist Expenses – [E]** Expenses incurred by a lobbyist and paid directly by the filer, or expenses incurred by the filer for goods or services used by a lobbyist or used to support or assist a lobbyist in connection with his or her activities as a lobbyist;
- iii. **Legislative-Related Services – [L]** Legislative-related services performed by a lobbying firm in the absence of express or implied authorization to engage in *direct communication* related to researching, monitoring, analyzing or drafting statutes, or recommending strategy, providing advice, or similar services concerning pending or proposed legislative or administrative action as required under Regulation 18614(b)(2);
- iv. **Consultants & Government Relations – [C]** Contracts for economic consideration with a business entity or individual, other than a lobbying firm or lobbyist, to provide governmental consulting, advocacy, or strategy;
- v. **Public Affairs – [P]** Coalition building, grassroots campaigns and public policy initiatives including news releases, media campaigns, social media messaging, publicity, literature and mailings, canvassing, and special events;
- vi. **Advertising – [A]** Including billboards, print, radio, television, text, email and other electronic advertising;
- vii. **Research – [R]** Including feasibility studies, analysis, polling, and public opinion research;
- viii. **Lobbying Events – [V]** Including event planning, rentals, equipment, and transportation for members of organizations or the public to meet public officials, hold rallies or attend hearings to influence legislative or administrative action;
- ix. **Other – [O]** For all other payments not covered by one of the above listed categories, including dues or similar payments made by state and local government agencies.

Frequently Asked Questions

1. A lobbyist employer owns its office building. Does it have to report the amount of overhead expenses related to the operation of the building on the Form 640?

The filer should only report costs of business overhead related to lobbying activity. This amount is reported as a lump sum along with other overhead expenses related to lobbying activity such as office supplies, rent, and legislative subscription services on Line 1 of the Form 640. Regular business overhead not related to lobbying activities that would continue to be incurred in substantially similar amounts regardless of the filer's activities to influence legislative or administrative action is not required to be reported on the Form 640.

2. When employees work from a home office, must the business disclose the employee's personal residence on the Form 640 when reporting salary payments of 10% or more to the employee?

The employer may use its business address instead of the employee's home address.

3. A nonprofit membership organization that is a lobbyist employer engages in lobbying-related and non-lobbying activities at a meeting. For instance, it provides its members with an update of bills it is lobbying and its staff also directly asks its members to contact legislators or to give testimony. How is staff time related to the meeting reported for purposes of the Form 640?

If staff is involved in soliciting or urging persons other than the lobbyist employer's employees to enter into direct communication with a legislative, agency, or elected state official to influence legislative or administrative action, the employee's time at the meeting counts toward the 10% threshold for reporting employee compensation in a calendar month in connection with other payments to influence legislative or administrative action.

4. **Is the 10% threshold for reporting employee compensation related to other payments to influence based on a salaried employee's required work hours or the salaried employee's actual hours worked? For example, if a salaried employee is required to work 175 hours in a calendar month, but the employee actually works 200 hours in one month, how is the 10% threshold determined?**

It is recommended that monthly-required work hours be used, rather than the actual hours worked.

5. **Does an employee's travel time to and from an event where the employee engages in influencing legislative or administrative action count toward the 10% threshold for reporting the employee's salary related to other payments to influence?**

Travel time counts towards whether an employee spends 10% or more of his or her time in a calendar month influencing legislative or administrative action. For example, an employee is providing testimony at a Legislative hearing, and the employee must travel to Sacramento to present his or her testimony. The employee must count the time preparing for the hearing, time spent traveling to and from the event to deliver the testimony, time waiting to offer the testimony, and the time actually delivering the testimony.

6. **Is the cumulative total required to include both itemized and non-itemized payments made to a vendor during a calendar year?**

The cumulative total is required to only include previously itemized amounts. For example, if a vendor is paid \$150 in Q3 (reported as part of the non-itemized lump sum), and \$3,000 in Q4, the report would show cumulative payments to the vendor of \$3,000 (only the itemized amount).

Resources:

1. CA Fair Political Practices Commission: www.fppc.ca.gov
 - [Telephone and Email Advice](#)
 - [Lobbying Manual and Forms](#)
2. CA Secretary of State: www.sos.ca.gov
 - [Electronic Filing Information](#)

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Attachment Form 640 (Attachment to Form 635 or Form 645)

CALIFORNIA FORM 640

PAGE _____ OF _____

NAME OF FILER: ABC Lobbyist Employer PERIOD COVERED: 7/1/XX - 9/30/XX

Quick Tip

For Use By: A lobbyist employer or a \$5,000 filer. Refer to the instructions on the cover page before completing this attachment.

Summary of Other Payments to Influence Legislative or Administrative Action:	
1. Total payments for overhead expenses related to lobbying activity. Report as a lump sum.	\$ 2,000
2. Total payments to Lobbying Coalitions. Report as a lump sum. (Form 630 must be attached)	\$ 0
3. Total payments of less than \$250 or \$2,500, as applicable, during the calendar quarter for lobbying activity (excluding overhead). Report as a lump sum.	\$ 10,500
4. Total payments of \$250 or more or \$2,500 or more, as applicable, during the calendar quarter for lobbying activity (excluding overhead). Itemize payments below.	\$ 9,000
5. Grand total of "Other Payments to Influence Legislative or Administrative Action." Also enter this total on the appropriate line of the Summary of Payments section on Page 1 of Form 635 or Form 645.	\$ 21,500

Report as a lump sum all payments made for office overhead and operating expenses associated with influencing legislative or administrative action. Examples: rent, utilities, office supplies, and subscriptions to legislative tracking services. Do not include regular, recurring business expenses that would have been incurred regardless of activities to influence legislative or administrative action.

Government agencies must itemize payments of \$250 or more, and all other lobbyist employers and \$5,000 filers must itemize payments of \$2,500 or more, made during the quarter for lobbying activity. Provide the payment code, name and address of the payee, the amount paid during the quarter, and the cumulative amount paid to the payee since January 1 of the current calendar year.

State and local government agencies also must itemize dues or similar payments of \$250 or more made to an organization that makes expenditures equal to 10% of its total expenditures or \$15,000 or more in a calendar quarter to influence legislative or administrative action. Government agencies must use the payment code [O] for these items.

Quick Tip

Payment Code, Name & Address of Payee	Amount This Quarter	Cumulative Amount Since January 1
[S] - Jordan Woods, ABC Lobbyist Employer 152 Broad Street, Sacramento, CA 95814	\$ 2,500	\$ 2,500
[V] - Ultimate Events, 800 Capitol Mall, Suite 10, Sacramento, CA 95814	\$ 6,500	\$10,500
Subtotal of all payments itemized above	\$ 9,000	

Before the payee name include a code (including the brackets before and after) to describe the primary purpose of the payment. For example: "[S]" for salary of employees other than lobbyists who are engaged for 10% or more of their time in one month in activities related to lobbying.

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