

1 Adopt 2 Cal. Code Regs., Section 18360.1 to read:

2 **§ 18360.1. Eligibility Requirements and Considerations - Streamline Case**

3 **Factors and Warning Letters.**

4 The Commission may include or exclude any filer from receiving a streamline penalty  
5 based upon mitigating or aggravating circumstances. Mitigating circumstances result in  
6 consideration of a Warning Letter being issued instead of a Streamline pPenalty. Aggravating  
7 circumstances result in the consideration of a Mainline Stipulation instead of a Streamline  
8 pPenalty. A Mainline Stipulation generally results in a higher penalty and includes a full  
9 description of the violation and surrounding events.

10 (a) Types of Violations Eligible.

11 (1) Late Statements and Reports, including Campaign, Statement of Economic Interests,  
12 and Lobbying.

13 (2) Unreported Economic Interest(s) on a Statement of Economic Interests.

14 (3) Unreported Lobbying Activity, Contributions or Expenditures.

15 (4) Cash Contribution(s) or Expenditure(s) of \$100 or more.

16 (5) Campaign Bank Account.

17 (6) Committee Naming.

18 (7) Advertising and Mass Mailing Disclosures.

19 (8) Recordkeeping.

20 (9) Gift Limit.

21 (10) Slate Mailer Organization Filing Issues.

22 (11) Proper Recusal of a Conflict of Interest.

23 (12) Major Donor Notifications.

1           **(b) Penalty Amount. The streamline penalty for each violation is found in Regulation**  
2 **18360.2.**

3           **(c) General Requirements for Eligibility, Considerations, Factors, and Automatic**  
4 **Exclusions.**

5           **(1) Eligibility Requirements:-**

6           **(A) Sign and submit to the Commission a streamline stipulation, decision, and order on a**  
7 **form provided by the Commission, and**

8           **(B) Pay a proposed penalty by cashier’s check, electronic payment, or money order in an**  
9 **amount as determined in Regulation 18360.2.**

10          **(2) Considerations and Factors.**

11          **(A) ~~Mitigating Circumstances~~ Considerations for a Warning Letter include:**

12          **(i) Low level of experience and sophistication of the party.**

13          **(ii) Self-reported violations before public discovery.**

14          **(iii) Violations resulted in minimal public harm.**

15          **(iv) Low amount raised and spent regarding the election.**

16          **(v) Unsuccessful.**

17          **(vi) Filer or candidate leaving office or never having obtained office.**

18          **(vii) Illness, incapacitation, death, or otherwise unable to perform duties.**

19          **(viii) Low activity during the missing or late reporting period.**

20          **(ix) Small percentage of overall activity for reporting period.**

21          **(x) Committee has terminated.**

22          **(xi) Fraudulent activity of other caused the violation.**

23          **(xii) Activity was reported by other participant in the transaction.**

1 (xiii) Activity was reported ~~timely~~ on another campaign statement of the filer.

2 (xiv) For late statements and reports, activity was unrelated to election that triggered  
3 filing requirements.

4 (xv) Have not received a Warning Letter for the same type of violation within the last two  
5 years.

6 (B) Automatic Exclusions ~~because of Aggravating Circumstances~~ from the Streamline  
7 Program include:

8 (i) Intent to conceal or violate the Political Reform Act or regulations relating to the Act.

9 (ii) Presented the FPPC false or altered evidence.

10 (iii) Made false statements to the FPPC regarding material facts.

11 (iv) Intentional interference with a witness in the FPPC matter.

12 (v) Prior penalty paid to the Commission for the same type of violation occurring within  
13 the last five years.

14 (vi) For late statements and reports, history of not timely filing statements or reports. ~~as~~  
15 part of a pattern.

16 (vii) Violations caused in the aggregate more than minimal public harm.

17 (viii) Has other violations under review for prosecution that do not qualify for a  
18 streamline penalty.

19 (d) Specific Requirements for Eligibility.

20 (1) Late Statements and Reports. To enter into a streamline settlement, an individual who  
21 failed to timely file a campaign statement or report, lobbying report, or Statement of Economic  
22 Interests must file the late statement or report with the appropriate agency unless the relevant

1 information was reported by the person elsewhere or the FPPC determines that the information  
2 has been sufficiently disclosed in the stipulation and/or other filings.

3 (A) Statement of Economic Interests

4 (i) Considerations and Factors.

5 a. ~~Considerations for a Warning Letter Mitigating Circumstances~~ include:

6 1. Only Statement of Economic Interests missing is the Leaving Office Statement.

7 2. Only Statement of Economic Interests missing is the Leaving Office Statement and the

8 Annual Statement that was due within three months of the date the public official left office.

9 b. Automatic Exclusions ~~from the Streamline Program because of Aggravating~~

10 ~~Circumstances~~ include:

11 1. For Statement of Economic Interests reporting violations, public official also had a

12 conflict of interest violation under Government Code Sections 1090 or 87100 involving the

13 undisclosed economic interest.

14 (B) Campaign Statement or Report.

15 (i) Considerations and Factors

16 a. ~~Considerations for a Warning Letter Mitigating Circumstances~~ include:

17 1. The committee had less than \$2,000 of activity for the statement period.

18 2. The committee filed an electronic (or paper) statement or report timely for the same

19 period.

20 3. The committee meets the requirements for administrative termination.

21 4. No history of not timely filing campaign statements or reports.

22 5. The statement or report was not due prior to a relevant election.

23 6. The statement or report was filed prior to the relevant election.

1 7. The late statement was not a 24-Hour Report, which was more than 5 days late and  
2 filed after the election.

3 b. Automatic Exclusions from the Streamline Program because of Aggravating  
4 Circumstances include:

5 1. The campaign statement or report at issue was required to report greater than \$50,000  
6 in contributions received or \$50,000 in expenditures made.

7 2. The number of campaign statements or reports not timely filed. ~~as part of a pattern.~~

8 (C) Lobbying Reports Required under Chapter 6 of the Political Reform Act.

9 (i) Considerations and Factors.

10 a. Considerations for a Warning Letter Mitigating Circumstances include:

11 1. The lobbyist is a placement agent not active in the state.

12 2. The lobbyist provided the report to the employer or firm who did not file the report.

13 3. The activity for the period was less than \$5,000.

14 4. No history of not timely filing reports. ~~as part of a pattern.~~

15 5. The filer was ill or other extenuating circumstances.

16 b. Automatic Exclusions from the Streamline Program because of Aggravating  
17 Circumstances include:

18 1. The total amount of payments for lobbying during the reporting period is greater than  
19 \$50,000.

20 2. The person tried to conceal lobbying activity.

21 3. An individual lobbied without registering.

22 4. The number of reports not timely filed.

1 5. There was a large amount of activity not disclosed in connection with legislative or  
2 administrative actions actively lobbied during the period.

3 6. The undisclosed activity included contributions.

4 (2) Unreported Economic Interest(s) on a Statement of Economic Interests.

5 a. Eligibility Requirements:- File an amended Statement of Economic Interests with the  
6 appropriate agency disclosing the previously undisclosed economic interest.

7 b. Considerations and Factors.

8 1. Considerations for a Warning Letter Mitigating Circumstances include:

9 A. Information regarding the economic interest was reported elsewhere on the statement.

10 B. The aggregate value of the gift(s) or income received from the economic interest was  
11 minimal (i.e., less than \$500).

12 C. The filer has not performed the duties of the office/position for a significant period of  
13 time due to illness or otherwise.

14 2. Automatic Exclusions from the Streamline Program because of Aggravating  
15 Circumstances include:

16 A. The undisclosed gift(s) or income received from a source that was regulated by or had  
17 business before the filer's agency.

18 B. The undisclosed gifts or income caused a conflict of interest.

19 (3) Unreported Lobbying Activity, Contributions or Expenditures.

20 a. Eligibility Requirements:- File an amended campaign statement or report that includes  
21 all required information regarding contributions received and expenditures made.

22 b. Considerations and Factors.

23 1. Considerations for a Warning Letter Mitigating Circumstances include:

1 A. The committee had less than \$1,000 of activity not reported.

2 B. The activity was reported prior to any relevant election on a different statement or  
3 report.

4 C. The committee meets the requirements for administrative termination.

5 D. The late reporting was due to illness or incapacity of the individual responsible for the  
6 filing.

7 2. Automatic Exclusions from the Streamline Program because of Aggravating  
8 Circumstances include:

9 A. Campaign Reporting: The total amount unreported was more than 25% of the total  
10 contributions or expenditures for the committee for the reporting period.

11 B. Lobbying Reporting: The total amount of activity unreported was more than 25% of  
12 the total required to be reported for that reporting period.

13 C. A history of campaign reporting violations.

14 (4) Cash Contribution(s) or Expenditure(s) of \$100 or More. Includes cashier's checks or  
15 similar instruments not drawn on the contributor's account and does not include the name of the  
16 contributor on its face.

17 a. Eligibility Requirements:- Refund to the State of California General Fund if the source  
18 of a contribution cannot be determined. Disclose the source of the contribution(s) or recipient(s)  
19 of the expenditure(s) on the appropriate campaign statement(s) or report(s).

20 b. Considerations and Factors.

21 1. Considerations for a Warning Letter Mitigating Circumstances include:

22 A. The amount received or spent is less than \$500.

1 2. Automatic Exclusions from the Streamline Program because of Aggravating

2 Circumstances include:

3 A. Failure to timely disclose the cash contribution(s) or expenditure(s) on campaign  
4 statement(s) or report(s).

5 B. The percentage of cash contributions and expenditures of \$100 or more exceeds 25%  
6 of total campaign contributions and expenditures for that reporting period.

7 C. The total amount of cash contributions and expenditures for that reporting period  
8 exceeds \$10,000.

9 D. The person made personal use of campaign funds.

10 E. The campaign records were insufficient to determine if use of cash concealed other  
11 violations.

12 (5) Campaign Bank Account.

13 a. Eligibility Requirements: Disclose the contribution(s) or expenditure(s) on the  
14 appropriate campaign statement(s) or report(s).

15 b. Considerations and Factors.

16 1. Considerations for a Warning Letter Mitigating Circumstances include:

17 A. Disclosure of the contribution(s) or expenditure(s) was reported timely on the correct  
18 campaign statement or report.

19 B. The candidate or his or her wholly owned business is the source of 50% or more of the  
20 committee funds for the election.

21 C. Reimbursement, if any, occurred within the time periods prescribed by the Act and  
22 regulations.

23 D. The activity was isolated to the beginning of the campaign.

1 2. Automatic Exclusions from the Streamline Program because of Aggravating

2 Circumstances include:

3 A. The total amount of all contributions and expenditures not deposited in a campaign  
4 bank account during the statement period exceeds 10% of the total contributions received for that  
5 period.

6 B. The total amount of all contributions and expenditures not deposited in a campaign  
7 bank account during the statement period exceeds \$10,000.

8 C. The total amount of all campaign expenditures not from the campaign bank account  
9 during the statement period exceeds 10% of the total amount of all campaign expenditures for  
10 that period or exceeds \$10,000 in total.

11 D. The person made personal use of campaign funds.

12 E. The campaign records were insufficient to determine if use of another account  
13 concealed other violations.

14 (6) Committee Naming.

15 a. Eligibility Requirements:- Committee name is amended.

16 b. Consideration and Factors.

17 1. Considerations for a Warning Letter Mitigating Circumstances include:

18 A. Names included essentially all required elements and was not misleading.

19 2. Automatic Exclusions because of Aggravating Circumstances include:

20 A. Name was misleading or ambiguous.

21 B. Incorrect name caused advertisements to be incorrect.

22 C. Incorrect name concealed major funder, major donor, or sponsor.

1 D. The committee had activity over \$10,000 for the reporting period during which the  
2 committee name was incorrect.

3 (7) Advertising and Mass Mailing Disclosures.

4 a. Eligibility Requirements:- Correction of the advertisement or mass mailing, if feasible,  
5 was done.

6 b. Considerations and Factors.

7 1. Automatic Exclusions from the Streamline Program because of Aggravating  
8 Circumstances include:

9 A. The violation is likely to result in confusion regarding the identity of the candidate or  
10 committee responsible for the advertisement, or a top contributor, sponsor, controlling candidate,  
11 or ballot measure supported or opposed.

12 B. The advertisement or mass mailing contains more than two missing or incorrect  
13 disclosures or display requirements in the disclaimer and one or more of the missing or incorrect  
14 disclosures is: (1) paid for by requirement, (2) top contributor information, or (3) the statement  
15 that the advertisement was not authorized by a candidate or committee controlled by a candidate.

16 2. Examples of minor violations that may qualify for a streamline penalty include the  
17 following:

18 A. Failure to include “paid for by” in the same manner and immediately adjacent to a  
19 committee name;

20 B. Disclosures in a font type, color, position, or size that does not comply with a  
21 requirement but is legible.

22 C. Disclosures that include a committee name that does not match the name as stated in  
23 the statement of organization but clearly identifies the source of the advertisement;

1 D. Failure to include a street address but other identifying information, such as a website  
2 address, is included;

3 E. Failure to list top contributors in proper order but they are all included;

4 F. Required size or time length of disclosure is not correct, but the disclaimer is still  
5 identifiable, and all the other disclosure is correct;

6 G. Failure to use the precise disclaimer language but all other disclosure is correct.

7 (8) Recordkeeping (as required by Government Code Section 84104 and Regulation  
8 18401).

9 a. Considerations and Factors.

10 1. ~~Considerations for a Warning Letter Mitigating Circumstances~~ include:

11 A. The missing records did not rise to the level to be considered a material violation.

12 2. Automatic Exclusions ~~from the Streamline Program because of Aggravating~~

13 ~~Circumstances~~ include:

14 A. The lack of recordkeeping inhibited audit efforts.

15 B. The lack of recordkeeping made it impracticable to determine if a person substantially  
16 complied with the Act's campaign reporting requirements.

17 C. The lack of recordkeeping may have blocked discovery of other violations.

18 (9) Gift limit (contained within Sections 86203 or 89503).

19 a. Eligibility:- If the person has received a gift over the limits, return the gift or reimburse  
20 the giver for the difference between the gift's fair market value and the applicable gift limit.

21 b. Considerations and Factors.

22 1. ~~Considerations for a Warning Letter Mitigating Circumstances~~ include:

1 A. No evidence that governmental decisions were made or effected regarding the gift  
2 giver by the recipient.

3 ~~B. Exclude if the gift giver is a named party in, or the subject of, a governmental decision~~  
4 ~~before the gift recipient or the gift recipient's agency. (Identical to 2.A. below.)~~

5 2. Automatic Exclusions from the Streamline Program because Aggravating  
6 Circumstances include:

7 A. The gift giver is a named party in, or the subject of, a governmental decision before  
8 the gift recipient or the gift recipient's agency.

9 B. Failure to report the gift on a Statement of Economic Interests, if required.

10 C. The fair market value of the gift is more than \$200 over the gift limit.

11 (10) Slate Mailer Organization Campaign Filings. Slate Mailer Organizations only  
12 qualify for possible participation in the Commission's Streamline Program if they have also filed  
13 timely campaign statements and reports as a committee under the Act disclosing essentially all of  
14 the information required to be reported by the late filed slate mailer organization campaign  
15 statements and reports.

16 (11) Proper Recusal of a Conflict of Interest. A person qualifies possible participation in  
17 the Commission's Streamline Program if they have identified that they may have a prohibited  
18 conflict of interest regarding the governmental decision before them and have recused  
19 themselves but failed to either:

20 a. Publicly identify the financial interest that gives rise to the conflict of interest or  
21 potential conflict of interest in detail sufficient to be understood by the public as detailed in  
22 Regulation 18707, subdivision (a), or

1            b. Properly leave the room until after the discussion, vote, and any other disposition of  
2 the matter is concluded.

3            (12) Major Donor Notification. A person qualifies for possible participation in the  
4 Commission’s Streamline Program if they failed to send out major donor notifications required  
5 under Section 84105 timely.

6            a. Considerations and Factors.

7            1. ~~Considerations for a Warning Letter Mitigating Circumstances~~ include:

8            A. The committee has been in existence less than one year.

9            B. The committee has never been required to send out the Section 84105 notifications  
10 before.

11            C. All persons who would have received the notifications timely filed as Major Donors, if  
12 required.

13 Note: Authority cited: Section 83112, Government Code. Reference: Sections 1090, 84104,  
14 87100, 84104, Government Code.