

FPPC IP Meeting – May 9, 2018

The existing Enforcement Streamline Program resolved 77% of all cases presented to the Commission last year. Below, the Enforcement Division has summarized the existing policy as well as the points and suggestions of the Fair Political Practices Commission from the March 22, 2018 Commission meeting to facilitate a discussion regarding changes to this existing program. The information gathered at this Interested Persons' meeting and from the public will then be brought back to the Commission for discussion and approval.

1. Violations Currently Included in the Streamline Program

- SEI Non-Filer
- SEI Non-Reporter
- Campaign Statement/Report Non-Filer
- Campaign Statement/Report Non-Reporter
- Lobbyist/Lobbying Firm/Lobbyist Employer/Lobbying Coalition/\$5,000-Filer Report Non-Filer

2. The Criteria and Threshold Currently Applied

Criteria applied to all categories: Enforcement has discretion to include or exclude any case from the program based upon mitigating and aggravating circumstances. Aggravating circumstances include: prior non-filing/non-reporting history, prior Enforcement prosecutions, or accompanying violations. Mitigating circumstances include: no longer in office, illness, level of sophistication, or other extenuating circumstances.

A. Statement of Economic Interests ("SEI") Non-Filer

The failure to timely file a SEI qualifies for the streamlined program if:

- a. The SEI is filed with the appropriate agency prior to the Stipulation being presented to the Commission;
- b. The filer does not have other violations under review for prosecution;
- c. The filer has not received a penalty from the Commission for failing to timely file an SEI or failing to timely report a qualifying economic interest; and
- d. There is no evidence of intent to conceal.

Specific aggravating circumstances include: gifts or income that were received from a source that was regulated by or had business before the filer's agency during the period covered by the SEI.

B. SEI Non-Reporter

The failure to timely report an economic interest on an SEI qualifies for the streamlined program if:

- a. The SEI is amended to include all pertinent economic interests and filed with the appropriate agency prior to the Stipulation being presented to the Commission;

- b. The unreported economic interests did not cause the filer to have a conflict of interest;
- c. The filer does not have other violations under review for prosecution;
- d. The filer has not received a penalty from the Commission for violating the annual gift limit, failing to timely file an SEI, or failing to timely report a qualifying economic interest; and
- e. There is no evidence of intent to conceal.

Specific aggravating circumstances include: gifts or income received from a source that was regulated by or had business before the filer's agency during the period covered by the SEI. Specific mitigating circumstances include: information is reported on another schedule or value of gifts received is below \$100.

C. Campaign Statement/Report Non-Filer

The failure to timely file a campaign statement or report qualifies for the streamlined program if:

- a. The statement or report is filed disclosing all reportable activity prior to the Stipulation being presented to the Commission;
- b. The filer has not received a penalty from the Commission in the past five years for failing to timely file a campaign statement or report, or failing to timely report a contribution received or expenditure made;
- c. The committee does not have more than \$25,000 of contributions received or expenditures made per campaign statement; and
- d. There is no evidence of intent to conceal.

Additional factors include:

- a. The amount the committee raised or spent with regard to the relevant election;
- b. Whether all paper statements and reports were timely filed and the committee was a first-time electronic filer;
- c. Whether the filer is in office, or was at the time of the violation;
- d. Whether the majority or large amount of contributions or expenditures were not disclosed prior to the relevant election;
- e. Whether contributions made or received were reported timely at the other end of the transaction; and
- f. Whether major donors were notified of their filing obligation.

Specific mitigating circumstances include: filer is no longer in office or never obtained office, the committee had less than \$1,000 of activity, all electronic statements were filed timely, or the committee meets the requirements for administrative termination.

4. Campaign Statement/Report Non-Reporter

The failure to timely report contributions received and expenditures made qualifies for the streamlined program if:

- a. The filer amended the statement or report to include all required information regarding contributions received and expenditures made prior to the Stipulation being presented to the Commission;
- b. The filer has not received a penalty from the Commission in the past five years for failing to timely file a campaign statement or report or failing to timely report a contribution received or expenditure made,
- c. The total amount unreported was less than \$25,000, or 20% of the total contributions or expenditures for the committee for the relevant election, whichever is greater, and;
- d. There is no evidence of intent to conceal.

Specific aggravating circumstances include: a majority or large amount of contributions or expenditures not disclosed prior to the relevant election. Specific mitigating circumstances include: filer is no longer in office or never obtained office, the committee had less than \$1,000 of activity unreported, all information was filed before the election but on another report or statement, or the committee is a candidate for administrative termination.

5. Lobbyist/Lobbying Firm/Lobbyist Employer/Lobbying Coalition/\$5,000-Filer Report Non-Filer

The failure to timely file a lobbyist, lobbying firm, lobbyist employer, lobbyist coalition, or \$5,000 filer report qualifies for the streamlined program if:

- a. The filer filed the report and disclosed all reportable activity prior to the Stipulation being presented to the Commission;
- b. The filer has not received a penalty from the Commission in the past five years for failing to timely file a lobbyist, lobbying firm, lobbyist employer, lobbying coalition, or \$5,000 filer report;
- c. The total amount not timely reported is less than \$25,000 per quarter; and
- d. There is no evidence of intent to conceal.

Specific aggravating circumstances include: the number of reports not timely filed, if a majority or large amount of activity is not disclosed in connection with legislative or administrative actions actively lobbied during the period. Specific mitigating circumstances include: filer is unsophisticated or newly registered, the lobbyist provided the statement to the employer or firm who did not file their statement, or the activity for the period was \$0.

3. The Current Penalty Structure¹

A. SEI Non-filer tiered penalty structure:

Tier	Penalty per SEI not timely filed
1 – Compliance in response to first Enforcement contact.	\$200
2 – Compliance prior to issuance of a probable cause report.	\$400

¹ No streamlined program penalty will exceed the statutory limit of \$5,000 per violation (Section 83116).

3 – Compliance prior to issuance of an accusation.	\$600 – \$800
4 – Compliance prior to adoption of a default decision.	\$800 – \$1,000

B. SEI Non-disclosure tiered penalty structure:

Tier	Penalty per SEI that did not include all qualifying economic interests
1 – Compliance in response to first Enforcement contact.	\$100
2 – Compliance prior to issuance of a probable cause report.	\$300
3 – Compliance prior to issuance of an accusation.	\$600 – \$800
4 – Compliance prior to adoption of a default decision.	\$800 – \$1,000

C. Campaign Statement/Report Non-Filer tiered penalty structure:

Tier	Penalty per statement not timely filed (for preelection, supplemental, and semiannual) or per day for reports
1 – Compliance in response to first Enforcement contact.	\$200, plus 1% of contributions received or expenditures made, whichever is greater.
2 – Compliance prior to issuance of probable cause report.	\$400, plus 1% of contributions received or expenditures made, whichever is greater.
3 – Compliance prior to issuance of an accusation.	\$800, plus 1% of contributions received or expenditures made, whichever is greater.
4 – Compliance prior to adoption of a default decision.	\$1,000, plus 1% of contributions received or expenditures made, whichever is greater.

D. Campaign Statement/Report Non-Reporter tiered penalty structure:

Tier	Penalty per incomplete stmt. or report filed
1 – Compliance in response to first Enforcement contact.	\$200, plus 1% of all unreported contributions received and expenditures made.
2 – Compliance prior to issuance of probable cause report.	\$400, plus 1% of all unreported contributions received and expenditures made.
3 – Compliance prior to issuance of an accusation.	\$800, plus 1% of all unreported contributions received and expenditures made.
4 – Compliance prior to adoption of a default decision.	\$1,000, plus 1% of all unreported contributions received and expenditures made.

E. Lobbyist/Lobbying Firm/Lobbyist Employer/Lobbying Coalition/\$5,000-Filer Report Non-Filer tiered penalty structure:

Tier	Penalty per report not timely filed
1 – Compliance in response to first contact by Enforcement.	\$200, plus 1% of all payments received or payments made for lobbying activity, whichever is greater.
2 – Compliance prior to issuance of probable cause report.	\$400, plus 1% of all payments received or payments made for lobbying activity, whichever is greater.
3 – Compliance prior to issuance of an accusation.	\$800, plus 1% of all payments received or payments made for lobbying activity, whichever is greater.
4 – Compliance prior to adoption of a default decision.	\$1,000, plus 1% of all payments received or payments made for lobbying activity, whichever is greater.

4. Other types of violations that could be included in the Streamline Program

- Small amounts of cash contributions received, or cash expenditures made (threshold could be a percentage, like 10%);
- One bank account violations (i.e. using personal or business bank accounts for small portions of the campaign where small could be a percentage, like 10%);
- Sender identification allegations for mailers and advertisements where the candidate or committee can be identified or does not otherwise comply with statute or regulation;
- Slate mailer organizations campaign statements and identification violations (Cmr. Hatch appears to oppose this addition while Cmr. Hayward appears in support);
- Recordkeeping violations where the amount of contributions with missing or incomplete records does not exceed a certain threshold (threshold could be a percentage of total records, like 20%);
- Gift limit violations of no more than \$100 above the statutory gift limit for non-lobbyists; and
- Technical disqualification violations involving the manner of disqualification for conflict of interests.

5. Possible Changes to Thresholds and Criteria

- a. The current threshold for campaign statements excludes any statement disclosing a total of \$25,000 or more in contributions and expenditures. With the current limits for giving to a political party committee for candidate support at \$36,500 and contributions to the Governor at \$29,200, this limit is proposed to be raised. Suggested amount could be \$40,000 in activity or \$36,500 with a tie to the COLA adjustments made by the Commission.
- b. The current lookback period for a similar violation to exclude you from receiving a streamline fine is 5 years from the time of the last violation, this could be shortened to include more activity. Cmr. Hatch pointed out that this criterion could be added to SEI violations.
- c. Cmr. Hatch and Cmr. Audero expressed an interest in seeing more specifics in the aggravating and mitigating factors for when you fall out of streamline into mainline or receive a warning letter.
- d. There could be a limit placed on how many late campaign statements or SEIs you could have to be eligible for the streamline program.

- e. Commissioner Hatch has expressed an interest in raising the penalties within these structures, including raising the percentages that add on to the campaign and lobbying late filer/non-disclosure cases. His proposal is to raise the penalties for campaign non-filer, campaign non-reporter and lobbying from what is stated above to a graduated percentage. This would mean Tier One = \$200, plus 1% of the activity; Tier Two = \$400, plus 2% of the activity; Tier Three = \$800, plus 3% of the activity, and Tier Four = \$1,000, plus 4% of the activity.
- a. Here is an example of how this would change a streamline stipulation. This hypothetical committee did not timely file two semiannual campaign statements and two 24-hour reports.

Count	Tier Level	Statement	Amount Not Timely Disclosed	Penalty (current)	Penalty (as proposed)	Difference
1	1	Semiannual	\$5,000	\$250	\$250	0
	2			\$450	\$500	\$50
	3			\$850	\$950	\$100
	4			\$1,050	\$1,200	\$150
2	1	Semiannual	\$20,000	\$400	\$400	0
	2			\$600	\$800	\$200
	3			\$1,000	\$1,400	\$400
	4			\$1,200	\$1,800	\$600
3	1	24-Hour Report	\$1,000	\$210	\$210	0
	2			\$410	\$420	\$10
	3			\$810	\$830	\$20
	4			\$1,010	\$1,040	\$30
4	1	24-Hour Report	\$25,000	\$450	\$450	0
	2			\$650	\$900	\$250
	3			\$1,050	\$1,550	\$500
	4			\$1,250	\$2,000	\$750