

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

2 **§ 18360.1. Eligibility Requirements and Considerations - Streamline and Warning Letters.**

3 The Chief of Enforcement may include or exclude any filer from receiving a streamline
4 penalty based upon mitigating or aggravating circumstances and the totality of the
5 circumstances, including situations where an exclusion may apply. Mitigating circumstances
6 result in consideration of a Warning Letter being issued instead of a streamline penalty.
7 Aggravating circumstances result in the consideration of either the Tier Two Streamline Program
8 or a Mainline Stipulation instead of a Tier One streamline penalty. Tier Two Streamline criteria
9 is listed in Regulation 18360.3. A Mainline Stipulation generally results in a higher penalty and
10 includes a full description of the violation and surrounding events.

11 The Commission will develop a diversion program as soon as feasible to allow for
12 education of respondents who have little or no experience with the Political Reform Act and
13 commit minor violations, in lieu of monetary penalties.

14 (a) Types of Violations Eligible.

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

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

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

19 (4) Cash Contribution(s) or Expenditure(s) of \$100 or More.

20 (5) Campaign Bank Account.

21 (6) Committee Naming.

22 (7) Advertising and Mass Mailing Disclosures.

23 (8) Recordkeeping.

- 1 (9) Gift Limit.
- 2 (10) Slate Mailer Organization Filing Issues.
- 3 (11) Proper Recusal of a Conflict of Interest.
- 4 (12) Major Donor Notifications.
- 5 (13) Major Donor Filers.
- 6 (14) Behested Payment Reports.
- 7 (b) Penalty Amount. The streamline penalty for each violation is found in Regulation
- 8 18360.2.

9 (c) General Requirements for Eligibility, Considerations, Factors, and Exclusions.

10 (1) General Eligibility Requirements:

11 (A) Sign and submit to the Commission a streamline stipulation, decision, and order on a

12 form provided by the Commission, and

13 (B) Pay a proposed penalty by cashier's check, electronic payment, or money order in an

14 amount as determined in Regulation 18360.2.

15 (2) Considerations and Factors.

16 (A) Considerations for a Warning Letter include a balancing of the following factors:

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

18 (ii) Self-reported violations before public discovery.

19 (iii) Violations resulted in minimal public harm.

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

21 (v) Unsuccessful.

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

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

- 1 (viii) Low activity during the missing or late reporting period.
- 2 (ix) Small percentage of overall activity ~~for the reporting period.~~
- 3 (x) Committee has terminated.
- 4 (xi) Fraudulent activity of other caused the violation.
- 5 (xii) Activity was reported by other participant in the transaction.
- 6 (xiii) Activity was reported timely on another campaign statement of the filer.
- 7 (xiv) For late statements and reports, activity was unrelated to the election that triggered
- 8 filing requirements.

9 (xv) The same candidate, committee, or principal officer has not been issued a Warning
10 Letter for the same type of violation within the last five years.

11 (B) Exclusions from both the Streamline Programs include:

12 (i) Any evidence of an intent to conceal or violate the Political Reform Act or regulations
13 relating to the Act.

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

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

16 (iv) Evidence of intentional interference with a witness in the FPPC matter.

17 (v) The extent and gravity of the public harm in the aggregate is more than minimal.

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

20 (C) Exclusions from the Tier One Streamline Program include:

21 (vi) The same candidate, committee, or principal officer has paid a prior penalty to the
22 Commission for the same type of violation occurring within the last five years.

23 (i) For late statements and reports, history of not timely filing statements or reports.

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

2 ~~(viii) Has other violations under review for prosecution that do not qualify for a~~
3 ~~streamline penalty.~~

4 (d) Specific Requirements for Eligibility.

5 (1) Late Statements and Reports.

6 (A) Eligibility Requirements: To enter into a Tier One streamline settlement, an
7 individual who failed to timely file a campaign statement or report, lobbying report, or Statement
8 of Economic Interests must file the late statement or report with the appropriate agency unless
9 the relevant information was reported by the person elsewhere or the FPPC determines that the
10 information has been sufficiently disclosed in the stipulation and/or other filings.

11 ~~(AB)~~ Statement of Economic Interests - Considerations and Factors.

12 (i) Considerations for a Warning Letter include:

13 a. The late filed Statement of Economic Interests is a Leaving Office Statement.

14 b. The late filed Statements of Economic Interests are the Leaving Office Statement and
15 the Annual Statement that was due within three months of the date the public official left office.

16 (ii) Exclusions from the Streamline Program include:

17 a. The undisclosed economic interests were from a source that was regulated by or had
18 business before the filer's agency.

19 ~~b.b. For Statement of Economic Interests reporting violations,~~ a The public official also
20 had a conflict of interest violation under Sections 1090 or 87100 involving the undisclosed
21 economic interest.

22 ~~(CB)~~ Campaign Statement or Report - Considerations and Factors.

23 (i) Considerations for a Warning Letter include:

- 1 a. The committee had less than \$2,000 of activity for the statement period.
- 2 b. The committee filed an electronic (or paper) statement or report timely for the same
- 3 period.
- 4 c. The committee meets the requirements for administrative termination.
- 5 d. The late statement or report was filed prior to the relevant election.
- 6 e. The statement due was a Form 470.

7 (ii) Exclusions from the Tier One Streamline Program include:

8 a. For all committees, participation in the Tier One Streamline Program is limited based
9 on the population of the jurisdiction of the committee. ~~or for special districts, the population~~
10 ~~within the boundaries of the district.~~ The population numbers are based on the U.S. Census.
11 Special districts will use the population scale of under 390,625 unless the population of the
12 boundaries of the district are provided ~~be asked to supply the population information based on~~
13 ~~the U.S. Census. Candidates, committees, treasurers, or principal officers will be excluded from~~
14 ~~participating in the Streamline Program if their district does not provide population numbers.~~ For
15 at large elections, use the entire population of the jurisdiction. For jurisdictions with districts,
16 take the total population of the jurisdiction and divide by the number of districts. The campaign
17 statement or report at issue was required to report contributions or expenditures totaling not more
18 than:

- 19 1. ~~\$4,000, for populations at or under 10,000;~~
- 20 2. ~~\$5,700, for populations between 10,001-25,000;~~
- 21 3. ~~\$8,200, for populations between 25,001-62,500;~~
- 22 4. ~~\$11,700, for populations between 62,501-156,250;~~
- 23 5. ~~\$16,700, for populations between 156,251-390,625;~~

1 ~~62.~~ \$23,900, for populations between 390,626-976,562;

2 ~~73.~~ \$34,200, for populations between 976,563-2,441,406;

3 ~~84.~~ \$48,900, for populations between 2,441,407-6,103,515;

4 ~~95.~~ \$69,900, for populations between 6,103,516-15,258,789;

5 ~~106.~~ \$100,000, for populations above 15,258,790~~89~~.

6 b. Pattern of campaign statements or reports not timely filed.

7 c. A 24-Hour Report required to be filed by a committee as defined in Section 82013 (a)
8 and (b) during the last 16 days before the election and not filed before the election unless the
9 amount required to be reported was de minimis in relation to the total campaign.

10 d. Any 24-Hour Report required to be filed by a committee as defined in Section 82013
11 (a) and (b) and not filed before the election if the contribution or expenditure was not reported on
12 another report or statement filed by the committee before the election.

13 e. The late filed report was filed more than five business days after it was due and the
14 timely reporting of the contribution would have ~~required~~ ~~resulted in~~ a change to the disclosure of
15 the committee's top contributors, as required by Sections ~~84501, subdivision (c) and~~ 84503.

16 ~~(E)~~ Lobbying Reports Required under Chapter 6 of the Political Reform Act -
17 Considerations and Factors.

18 (i) Considerations for a Warning Letter include:

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

20 b. The lobbyist provided the report to the employer or firm who did not file the report.

21 c. The total required activity to be reported for that reporting period was less than \$5,000.

22 d. No history of not timely filing reports.

23 e. The filer was ill or other extenuating circumstances.

- 1 (ii) Exclusions from the Tier One Streamline Program include:
- 2 a. The total required activity to be reported for that reporting period is greater than
- 3 \$~~10~~50,000.
- 4 b. Evidence that the filer tried to conceal lobbying activity.
- 5 c. An individual lobbied without registering.
- 6 d. Multiple reports not timely filed.
- 7 e. There was evidence of a substantial amount of activity not disclosed in connection with
- 8 legislative or administrative actions actively lobbied during the period.
- 9 f. The undisclosed activity included campaign contributions.
- 10 (2) Unreported Economic Interest(s) on a Statement of Economic Interests.
- 11 (A) Eligibility Requirements: File an amended Statement of Economic Interests with the
- 12 appropriate agency disclosing the previously undisclosed economic interest.
- 13 (B) Considerations and Factors.
- 14 (i) Considerations for a Warning Letter include:
- 15 a. Information regarding the economic interest was reported elsewhere on the statement.
- 16 b. The aggregate value of the gift(s) or income received from the economic interest was
- 17 minimal (i.e., less than \$500).
- 18 c. The filer has not performed the duties of the office/position for a significant period of
- 19 time due to illness or otherwise.
- 20 (ii) Exclusions from the Streamline Program include:
- 21 a. The undisclosed gift(s) or income received from a source that was regulated by or had
- 22 business before the filer's agency.

1 b. The undisclosed ~~gift(s) or income~~ economic interest caused a conflict of interest
2 violation under Sections 1090 or 87100.

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

4 (A) Eligibility Requirements: File an amended campaign statement or report that includes
5 all required information including contributions received, expenditures made, or other activity.

6 (B) Considerations and Factors.

7 (i) Considerations for a Warning Letter include:

8 a. The committee, lobbyist, lobbying firm, lobbyist employer, or person had less than
9 \$2,000 of activity not reported.

10 b. The activity was reported prior to any relevant election on a different statement or
11 report.

12 c. The committee meets the requirements for administrative termination.

13 d. The late reporting was due to illness or incapacity of the individual responsible for the
14 filing.

15 (ii) Exclusions from the Tier One Streamline Program include:

16 a. Campaign Reporting: The total amount unreported ~~was more than 20% of the total~~
17 ~~contributions or expenditures for the committee for the reporting period or the total amount~~
18 ~~unreported~~ is greater than the applicable population-based limit per reporting period on the
19 committee otherwise found in this regulation.

20 b. Lobbying Reporting: The total unreported activity to be reported for that reporting
21 period is greater than 20% of the activity required to be reported for that reporting period or is
22 greater than \$~~10~~50,000.

1 (4) Cash Contribution(s) or Expenditure(s) of \$100 or More. Cash means legal tender and
2 cashier's checks or similar instruments not drawn on the contributor's account and that does not
3 include the name of the contributor on its face.

4 (A) Eligibility Requirements: Refund to the source of the contribution or the State of
5 California General Fund, if the source of a contribution cannot be determined. Disclose the
6 source of the contribution(s) or recipient(s) of the expenditure(s) on the appropriate campaign
7 statement(s) or report(s).

8 (B) Considerations and Factors.

9 (i) Considerations for a Warning Letter include:

10 a. The aggregate amount received or spent is less than \$500.

11 (ii) Exclusions from the Tier One Streamline Program include:

12 a. Failure to timely disclose the cash contribution(s) or expenditure(s) on campaign
13 statement(s) or report(s).

14 b. The percentage of cash contributions and expenditures of \$100 or more exceeds 25%
15 of total campaign contributions and expenditures of the committee for the reporting period.

16 c. The total amount of cash contributions and expenditures for the reporting period
17 exceeds \$10,000.

18 d. The person made personal use of campaign funds.

19 e. The campaign records were insufficient to determine if use of cash concealed other
20 violations.

21 (5) Campaign Bank Account.

22 (A) Eligibility Requirements: Disclose the contribution(s) or expenditure(s) on the
23 appropriate campaign statement(s) or report(s).

1 (B) Considerations and Factors.

2 (i) Considerations for a Warning Letter include:

3 a. Disclosure of the contribution(s) or expenditure(s) was reported timely on the correct
4 campaign statement or report of the committee.

5 b. The candidate or his or her wholly owned business is the source of 50% or more of the
6 committee funds for the election.

7 c. Reimbursement, if any, occurred within the time periods prescribed by the Political
8 Reform Act and regulations.

9 d. The activity was isolated to the beginning of the campaign.

10 (ii) Exclusions from the Tier One Streamline Program include:

11 a. The total amount of all contributions not deposited in a campaign bank account during
12 the statement period exceeds 10% of the total contributions received for that period or the total
13 amount exceeds \$10,000.

14 b. The total amount of all campaign expenditures not from the campaign bank account
15 during the statement period exceeds 10% of the total amount of all campaign expenditures for
16 that period or the total amount exceeds \$10,000.

17 c. The person made personal use of campaign funds.

18 d. The campaign records were insufficient to determine if use of another account
19 concealed other violations.

20 (6) Committee Naming.

21 (A) Eligibility Requirements: Committee name must be amended to comply with
22 committee naming requirements.

23 (B) Consideration and Factors.

- 1 (i) Considerations for a Warning Letter include:
- 2 a. Name included essentially all required elements and was not misleading.
- 3 (ii) Exclusions from the Tier One Streamline Program include:
- 4 a. Name was misleading or ambiguous.
- 5 b. Incorrect name caused advertisements to be incorrect.
- 6 c. Incorrect name failed to disclose a major contributor, major donor, or sponsor.
- 7 d. The committee had activity over \$10,000 for the reporting period during which the
- 8 committee name was incorrect.

9 (7) Advertising and Mass Mailing Disclosures.

10 (A) Eligibility Requirements: Correction of the advertisement or mass mailing, if

11 feasible, was done.

12 (B) Considerations and Factors.

13 (i) Exclusions from the Tier One Streamline Program include:

14 a. The violation is likely to result in confusion regarding the identity of the candidate or

15 committee responsible for the advertisement, or a top contributor, sponsor, controlling candidate,

16 or ballot measure supported or opposed; whether the advertisement is an independent

17 expenditure; or whether the advertisement was authorized by a candidate or candidate-controlled

18 committee.

19 b. The advertisement or mass mailing contains two or more ~~than two~~ missing or incorrect

20 disclosures or display requirements in the disclaimer and one or more of the missing or incorrect

21 disclosures is: (1) ~~paid for by~~ the committee name requirement, (2) top contributor information

22 (top contributor must be substantially correct), or (3) the statement that the advertisement was

23 not authorized by a candidate or committee controlled by a candidate. A disclosure that fails to

1 meet sizing requirements to the extent that the disclosure is not legible to the average viewer is
2 considered a “missing or incorrect disclosure.”

3 (ii) Examples of minor violations that may qualify for a streamline penalty include the
4 following:

5 a. Failure to include “paid for by” or “ad paid for by” in the same manner and
6 immediately adjacent to a committee name;

7 b. Disclosures in a font type, color, position, or size that does not comply with a
8 requirement but is as legible as the requirement;

9 c. Disclosures that include a committee name that does not match the name as stated in
10 the statement of organization but clearly identifies the source of the advertisement;

11 d. Failure to include a street address but other identifying information, such as a website
12 address, is included;

13 e. Inadvertent failure to list top contributors in proper order but they are all included;

14 f. Required size or time length of disclosure is not correct, but the disclaimer is
15 identifiable, and the remainder of the disclosure is correct;

16 g. Failure to use the precise disclaimer language but the remainder of the disclosure is
17 correct.

18 (8) Recordkeeping (as required by Section 84104 and Regulation 18401).

19 (A) Considerations and Factors.

20 (i) Considerations for a Warning Letter include:

21 a. The missing records do not rise to the level to be considered a material violation.

22 (ii) Exclusions from the Tier One Streamline Program include:

23 a. The lack of recordkeeping inhibited audit efforts.

1 b. The lack of recordkeeping made it impracticable to determine if a person substantially
2 complied with the Act's campaign reporting requirements.

3 c. The lack of recordkeeping may have inhibited discovery of other violations.

4 (9) Gift Limit (contained within Sections 86203 or 89503).

5 (A) Eligibility Requirements: If a person receives a gift over the limit, they must return
6 the gift or reimburse the giver for the difference between the gift's fair market value and the
7 applicable gift limit.

8 (B) Considerations and Factors.

9 (i) Considerations for a Warning Letter include:

10 a. No evidence that governmental decisions were made or effected regarding the gift
11 giver by the recipient.

12 (ii) Exclusions from the Tier One Streamline Program include:

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

15 b. Failure to report the gift on a Statement of Economic Interests, if required.

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

17 (10) Slate Mailer Organization Campaign Filings.

18 (A) Eligibility Requirements: Slate Mailer Organizations only qualify for possible
19 participation in the Commission's Tier One Streamline Program if they have also filed timely
20 campaign statements and reports as a committee under the Political Reform Act disclosing
21 essentially all of the information required to be reported by the late filed slate mailer
22 organization campaign statements and reports.

23 (11) Proper Recusal for a Conflict of Interest.

1 (A) Eligibility Requirements: An individual may qualify to participate in the
2 Commission's Tier One Streamline Program if the individual identified a potential conflict of
3 interest regarding the governmental decision and recused his or herself but failed to either:

4 ~~(A)~~ Publicly identify the financial interest that gives rise to the conflict of interest or
5 potential conflict of interest in detail sufficient to be understood by the public as detailed in
6 Regulation 18707, subdivision (a), or

7 ~~(B)~~ Properly leave the room until after the discussion, vote, and any other disposition of
8 the matter is concluded.

9 (12) Major Donor Notifications.

10 (A) Eligibility Requirements: An individual or committee may qualify for participation in
11 the Commission's Tier One Streamline Program if they failed to timely send out major donor
12 notifications required by Section 84105.

13 ~~(A)~~ Considerations and Factors.

14 (i) Considerations for a Warning Letter include:

15 a. The committee has been in existence less than one year.

16 b. The individual or committee has not previously been required to send out the major
17 donor notification.

18 c. All persons who would have received the notifications timely filed as Major Donors, if
19 required.

20 (13) Major Donor Filers.

21 (A) Eligibility Requirements: To enter into a streamline settlement, an individual who
22 failed to timely file a campaign statement or report as a major donor committee must file the late
23 statement or report with the appropriate agency unless the relevant information was reported by

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

3 (B) Considerations and Factors.

4 (i) Considerations for a Warning Letter include:

5 a. First-time major donor filer and the individual or committee was not sent the major
6 donor notification as required.

7 c. Contributions for the calendar year were \$30,000 or less.

8 (ii) Exclusions from the Tier One Streamline Program include:

9 a. Contributions for the calendar year exceeded \$50,000.

10 b. The contributions also required 24-Hour Reports to be filed within the last 16 days
11 before the relevant election and the recipient of the contribution did not file a 24-Hour Report
12 before the relevant election.

13 (14) Behested Payment Reports.

14 (A) Eligibility Requirements: To enter into a streamline settlement, an individual who
15 failed to timely file a behested payment report must file the late report with the appropriate
16 agency unless the FPPC determines that the information has been sufficiently disclosed in the
17 stipulation and/or other filings.

18 (B) Considerations and Factors.

19 (i) Exclusions from a Warning Letter and both Tier One and Tier Two Streamline
20 Programs include:

21 a. A perceived or actual personal benefit. A “perceived personal benefit” means the
22 Enforcement Chief believes the evidence sufficiently supports a reasonable belief or strong

1 suspicion that the official received a benefit, which includes evidence of a direct benefit to a
2 family member of the official.

3 (ii) Considerations for a Warning Letter include:

4 a. First-time behested payment report filer.

5 b. The report was filed before Enforcement contact, complainant disclosure or media
6 exposure.

7 c. No history of filing late behested payment reports.

8 d. The amount reported late was \$30,000 or less for a single behested payment report.

9 e. The report was filed within 100 days of when it was due.

10 f. The behestor provides evidence that more than two efforts were made to obtain the
11 information timely from the maker of the payment.

12 g. Only a single bested payment report was late in a six-month period.

13 (ii) Exclusions from the Tier One Streamline Program include:

14 a. The maker of the payment is a named party in, or the subject of, a governmental
15 decision before the behestor or the behestor's agency while the decision is pending and within
16 three months before and for three months following the date a final decision is rendered.

17 "Maker" includes the individual, the entity and any agent acting as an intermediary. For
18 governmental decisions regarding legislation, "governmental decision" includes only nongeneral
19 legislation as defined in Section 87102.6.

20 b. The amount reported late was \$50,000 or more for a single behested payment report.

21 c. The amount required to be reported, when divided by the number of public officials
22 participating in the behest, was \$50,000 or more.

1 d. The behestor has paid a prior penalty to the Commission for the same type of violation
2 occurring within the last five years.

3 Note: Authority cited: Section 83112, Government Code. Reference: Sections 1090, 84104 and
4 87100, Government Code.

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