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FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Remke, Commissioners Audero, Cardenas, Hatch, and Hayward
From: Galena West, Enforcement Chief
Subject: Enforcement Streamline Programs
Date: March 12, 2018

INTRODUCTION

The purpose of this memorandum is to present the Fair Political Practices Commission (the “Commission”) with information to facilitate a discussion of the existing streamline program which last year resolved 77% of all cases presented to the Commission. The Enforcement Division (“Enforcement”) can then summarize the points and suggestions of the Commission to present recommendations for changes to the existing streamlined programs. This summary can then be presented to the public at an Interested Persons’ meeting for comment and then brought back to the Commission for discussion and approval.

BACKGROUND

The Enforcement Division analyzes and processes roughly 2,000 complaints and referrals per year. Throughout its history, Enforcement has grappled with the correct level of prosecution for individuals and committees who have violated the Political Reform Act (“Act”)¹ but have a lesser degree of public harm associated with their violation for a variety of reasons. As a result, as early as 1999, Enforcement proposed handling these cases through a streamlined procedure where the penalties are reduced and the *Stipulation, Decision and Orders* (“Stipulation”) presented to the Commission are more abbreviated and standardized.

The Enforcement Division currently operates three main types of streamlined programs: 1) Campaign Non-reporter or Non-filer (Sections 84200, et sec.); 2) Statement of Economic Interests Non-reporter or Non-filer (Section 87200, et sec.); and 3) Lobbying Non-reporter and Non-filer (Section 86100 et seq.).² These programs are designed to encourage voluntary compliance with the reporting requirements, as well as impose uniform stipulations and penalties for certain types of violations as long as the respondent otherwise qualifies for the program.

The current program was approved by a formal vote of the Commission at the May 21, 2015 Commission Meeting. This memorandum will show (1) what violations the existing streamline program includes, (2) other types of violations that could be included in the program but are not currently, (3) the criteria and thresholds currently applied, and (4) the current penalty structure.

¹ All statutory references are to the Political Reform Act of 1974 found in Government Code Section 81000 et seq.

² A fourth type exists for Annual Fee cases referred from the Secretary of State’s Office but as that is not currently being enforced, it is not discussed in this memorandum.

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

- Small amounts of cash contributions received, or cash expenditures made;
- One bank account violations (i.e. using personal or business bank accounts for small portions of the campaign);
- Sender identification allegations for mailers and advertisements where the candidate or committee can be identified and does not otherwise comply with statute or regulation;
- Slate mailer organizations campaign statements and identification violations;
- Recordkeeping violations where the amount of contributions with missing or incomplete records does not exceed a certain threshold;
- 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.

3. The criteria and threshold currently applied

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

Public officials and candidates for public office are required disclose their economic interests by filing SEIs. The Commission has determined that there is a strong public interest in the timely filing of SEIs and a need to resolve SEI non-filing cases expeditiously to obtain prompt compliance with the law. 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.

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

B. SEI Non-Reporter

Public officials are required to report all defined, disclosable economic interests on their SEIs. 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.

Enforcement has discretion to include or exclude any case from the program based upon mitigating and aggravating circumstances. Aggravating circumstances include: prior non-filing history, prior Enforcement prosecutions, accompanying violations, or gifts or income were received from a source that was regulated by or had business before the filer's agency during the period covered by the SEI. Mitigating circumstances include: no longer in office, level of sophistication, information is reported on another schedule, value of gifts received is below \$100, illness, or other extenuating circumstances.

C. Campaign Statement/Report Non-Filer

Candidates, elected officers, and committees are required to timely file many campaign statements and reports. 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.

Enforcement has discretion to include or exclude any case from the program based upon mitigating and aggravating circumstances. Aggravating circumstances include: prior non-filing history, prior Enforcement prosecutions, or accompanying violations. 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, the committee meets the requirements for administrative termination, or filer was ill or other extenuating circumstances.

4. Campaign Statement/Report Non-Reporter

Section 84211 requires that every campaign statement disclose information regarding all payments received or spent (contributions and expenditures). 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.

Enforcement has discretion to include or exclude any case from the program based upon mitigating and aggravating circumstances. Aggravating circumstances include: prior non-filing history, prior Enforcement prosecutions, majority or large amount of contributions or expenditures not disclosed prior to the relevant election or accompanying violations. 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, the committee is a candidate for administrative termination, or filer was ill or other extenuating circumstances.

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

Lobbyists, lobbying firms, lobbyist employers, and lobbying coalitions are required to file quarterly reports, regardless of the level of activity, during each two-year session in which they register to lobby. \$5,000 filers are persons who make payments to influence legislative or administrative action aggregating \$5,000 or more in a calendar quarter file only for each calendar quarter in which the person spends \$5,000. 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.

Enforcement has discretion to include or exclude any case from the program based upon mitigating and aggravating circumstances. Aggravating circumstances include: prior non-filing history, prior Enforcement prosecutions, number of reports not timely filed, majority or large amount of activity not disclosed in connection with legislative or administrative actions actively lobbied during the period, or accompanying violations. 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, the activity for the period was \$0, or filer was ill or other extenuating circumstances.

4. The current penalty structure³

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
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

³ No streamlined program penalty will exceed the statutory limit of \$5,000 per violation (Section 83116).

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.