



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Miadich and Commissioner Cardenas

From: Galena West, Executive Director
Angela Brereton, Enforcement Chief

Subject: Law and Policy Committee Points to Consider regarding the Streamline and Warning Letter Programs

Date: December 4, 2020

Requested Action and Summary of Proposal

As proposed, Regulations 18360.1, 18360.2 and 18360.3 will expand and adjust the Commission's Streamline Settlement and Warning Letter Programs. These changes are in response to the Commission's request when it approved the new program at the January 17, 2019 Commission Meeting that the Enforcement Division reevaluate the Streamline Program after it had been in effect about a year. Since the adoption of the current program, the Enforcement Chief has approved approximately 329 Streamline cases. In contrast, the Commission has been presented approximately 113 mainline stipulations (not including defaults) during this time, which is about 34% of all cases. Prior to that time, the percentage of mainline cases presented to the Commission under the previous program was 23%. The change in the percentage of cases can be attributed to certain criteria being stricter than the previous program. Instead of loosening these criteria, staff instead recommends the Commission adopt a second tier to the Streamline Program to capture this activity with some minor changes to the existing program. This second-tier idea was presented at the May 7, 2020 Law and Policy Committee meeting as well as at the July 24, 2020 Commission meeting and received support.

More broadly, the Commission has expressed its policy preferences that enforcement resources be primarily directed at the most serious and complex violations of the Political Reform Act, and lower level violations of the Act, including unintentional violations by first-time candidates/committees, generally be handled through the Streamline and/or Warning Letter Programs. The Commission has also expressed its interest in creating a "diversion" program through its Education and Outreach Division that would allow certain types of low-level violations to be resolved by a respondent participating in educational programs designed to improve compliance in the future. The changes proposed by staff are intended to further these policy preferences expressed by the Commission.

Summary of Major Changes

1. Addition of a Second Tier for violations with more public harm but that do not rise to the level required for mainline prosecution.

2. Addition of Major Donor Committees. Two categories have been added as eligible for participation in the Streamline program: 1) Major Donor Committees who made contributions of \$50,000 or less will be eligible to participate in Tier One; 2) Major Donor Committees who made contributions of more than \$50,000 and less than \$150,000 (with less than three statements or reports filed late) will be eligible to participate in Tier Two. Major Donor Committees who made contributions that also required 24-Hour Reports to be filed within the last 16 days before the relevant election and the recipient of the contribution did not file a 24-Hour Report before the relevant election will be excluded from participation in either program.
3. Addition of Behested Payment reports. A behestor is excluded from Tier One if the amount reported late was \$50,000 or more for a single behested payment report, or the amount required to be reported, when divided by the number of public officials participating in the behest, was \$50,000 or more. A behestor is excluded from Tier Two if the amount to be reported on the behested payment report exceeded \$150,000, or the amount required to be reported, when divided by the number of public officials participating in the behest, was \$150,000 or more.
If the maker of the payment is a named party in, or the subject of, a governmental decision before the behestor or the behestor's agency while the decision is pending and within three months before and for three months following the date a final decision is rendered, the behestor is prohibited from participating in either tier. "Maker" includes the individual, the entity and any agent acting as an intermediary. For governmental decisions regarding legislation, the regulation now specifies that "governmental decision" includes only nongeneral legislation as defined in Section 87102.6.
Additionally, if there is a "perceived personal benefit" then the matter is excluded from eligibility to receive a Warning Letter or either Streamline Program. A "perceived personal benefit" means the Enforcement Chief believes the evidence sufficiently supports a reasonable belief or strong suspicion that the official received a benefit, which includes evidence of a direct benefit to a family member of the official.
4. The criteria used to exclude cases by population of jurisdiction has been modified to return to the thresholds more similar to prior thresholds that worked successfully in the past since approximately 90% of jurisdictions had their eligibility thresholds greatly reduced.
5. The thresholds have been modified in response to the data gathered regarding over-exclusion and over-inclusion of cases in the existing program. This includes the top threshold for lobbying (lowered from \$100,000 per report to \$50,000) and the 20% thresholds for campaign nonreporting.
6. The advertising rules have had clarification added to specify that top contributor information is only included when it is incorrect (not missing) for Tier One. And for Tier Two, the regulation has been modified to address the concerns that two missing or wrong top contributors could still qualify for streamline.

7. Adding the language to allow for an education diversion program to the options for enforcement in the future has been added and can be implemented by policy once resources are in place to start the program. This program is anticipated to apply to first-time, inexperienced parties who attempted to comply in good faith and were unfamiliar with the filing requirements but were cooperative with the Enforcement Division when contacted.
8. Penalties were modified to not increase with the amount of noncompliance with resolution of the matter.
9. More discretion to the streamline/warning letter program has been added and some of the rigid criteria has been reduced to address the reality where the Enforcement Division must exclude cases from the Streamline and Warning Letter Program if a specific criterion is met even when the overall evaluation of the case justifies a lesser treatment than a Mainline Stipulation. For instance, if a first-time filer has amended to fix their filings before the election, they will not be considered for a warning letter or streamline penalty if they exceed the population threshold for that reporting period.

Requested Action

As proposed, Regulations 18360.1, 18360.2 and 18360.3 will expand and adjust the Commission's Streamline Settlement and Warning Letter Programs. Staff recommends the Committee to recommend adoption of the proposed amendments to the Commission at the next Commission meeting.