

1 Adopt 2 Cal. Code Regs., Section 18360.3 to read:

2 **§ 18360.3. Eligibility Requirements and Considerations – Tier Two Streamline Program.**

3 The Chief of Enforcement may include or exclude any filer from receiving a Tier Two
4 streamline penalty based upon mitigating or aggravating circumstances and the totality of the
5 circumstances, including situations where an exclusion may apply. Violations excluded from
6 Tier One Streamline Program can be considered for Tier Two Streamline penalties if aggravating
7 circumstances do not result in the exclusion from the program based on the criteria below.

8 Excluded violations will be processed as Mainline Stipulations. A Mainline Stipulation generally
9 results in a higher penalty and includes a full description of the violation and surrounding events.

10 (a) Types of Violations Eligible.

11 (1) Late Statements and Reports, including Campaign, Statements 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) Major Donor Filers.

22 (11) Behested Payment Reports.

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 Exclusions.

4 (1) General Eligibility Requirements:

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

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

9 (2) Considerations and Factors.

10 (A) Exclusions from Tier Two Streamline Program include:

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

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

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

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

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

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

19 (B) Violations eligible for possible inclusion in the Tier Two Streamline Program
20 include:

21 (i) The same candidate, committee, or principal officer has paid a Tier One penalty to the
22 Commission or received a Warning Letter from the Commission for the same type of violation
23 occurring within the last five years.

1 (ii) For late statements and reports, history of not timely filing statements or reports.

2 (d) Specific Requirements for Eligibility.

3 (1) Late Statements and Reports.

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

9 (B) Statement of Economic Interests - Considerations and Factors.

10 (i) Violations eligible for possible inclusion in the Tier Two Streamline Program include:

11 a. The public official has paid a Tier One penalty to the Commission or received a
12 Warning Letter from the Commission for the same type of violation occurring within the last five
13 years.

14 b. The undisclosed economic interests were from a source that was regulated by or had
15 business before the filer's agency but did not cause a conflict of interest violation under Sections
16 1090 or 87100.

17 (C) Campaign Statement or Report - Considerations and Factors.

18 (i) Violations eligible for possible inclusion in the Tier Two Streamline Program include:

19 a. Committees excluded from Tier One as a result of the limits based on population for
20 the Tier One Streamline Program but limited to a maximum of \$100,000 in activity for the
21 relevant statement or report.

1 b. A 24-Hour Report required to be filed by a committee as defined in Section 82013 (a)
2 and (b) during the last 16 days before the election and not filed before the election unless the
3 amount required to be reported was \$50,000 or greater.

4 c. Any 24-Hour Report required to be filed by a committee as defined in Section 82013
5 (a) and (b) and not filed before the election and the contribution or expenditure was not reported
6 on another report or statement filed by the committee before the election, unless the subject
7 contribution or expenditure would have disclosed an advertisement or mass mailing paid for or
8 sent by the committee, and the advertisement or mass mailing failed to disclose the name of the
9 committee in accordance with Section 84502 or 84305.

10 d. The late filed report was filed more than five business days after it was due and the
11 timely reporting of the contribution would have resulted in a change to the disclosure of the
12 committees' top contributors, as required by Section 84503.

13 (D) Lobbying Reports Required under Chapter 6 of the Political Reform Act -
14 Considerations and Factors.

15 (i) Exclusions from the Tier Two Streamline Program include:

16 a. Evidence that the filer tried to conceal lobbying activity.

17 b. An individual lobbied without registering.

18 c. There was evidence of a substantial amount of activity not disclosed in connection with
19 legislative or administrative actions actively lobbied during the period.

20 d. The undisclosed activity included campaign contributions.

21 (ii) Violations eligible for possible inclusion in the Tier Two Streamline Program include:

22 a. The total required activity to be reported for that reporting period is greater than
23 \$50,000 but less than \$100,000.

1 b. Multiple reports not timely filed.

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

3 (A) Eligibility Requirements: File an amended Statement of Economic Interests with the
4 appropriate agency disclosing the previously undisclosed economic interest.

5 (B) Considerations and Factors.

6 (i) Exclusions from the Tier Two Streamline Program include:

7 a. The undisclosed economic interest caused a conflict of interest violation under
8 Sections 1090 or 87100.

9 (ii) Violations eligible for possible inclusion in the Tier Two Streamline Program include:

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

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

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

15 (B) Considerations and Factors.

16 (i) Violations eligible for possible inclusion in the Tier Two Streamline Program include:

17 a. Campaign Reporting: The total amount unreported is greater than the applicable
18 population-based limit per reporting period on the committee otherwise found in Regulation
19 18360.1 but less than \$100,000.

20 b. Lobbying Reporting: The total unreported activity to be reported for that reporting
21 period is less than \$100,000.

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) Exclusions from the Tier Two Streamline Program include:

10 a. The person made personal use of campaign funds.

11 (ii) Violations eligible for possible inclusion in the Tier Two Streamline Program include:

12 a. Failure to disclose the cash contribution(s) or expenditure(s) on campaign statement(s)
13 or report(s) if the total amount of cash is \$1,000 or less for that statement or report.

14 b. The percentage of cash contributions and expenditures of \$100 or more exceeds 25%
15 but is not greater than 50% of total campaign contributions and expenditures of the committee
16 for the reporting period.

17 c. The total amount of cash contributions and expenditures for the reporting period
18 exceeds \$10,000 but is not greater than \$25,000.

19 (5) Campaign Bank Account.

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

22 (B) Considerations and Factors.

23 (i) Exclusions from the Tier Two Streamline Program include:

1 a. The person made personal use of campaign funds.

2 b. The campaign records were insufficient to determine if use of another account
3 concealed other violations.

4 (ii) Violations eligible for possible inclusion in the Tier Two Streamline Program include:

5 a. The total amount of all contributions not deposited in a campaign bank account during
6 the statement period exceeds 10% but is less than 40% of the total contributions received for that
7 period or the total amount exceeds \$10,000 but is less than \$25,000.

8 b. The total amount of all campaign expenditures not from the campaign bank account
9 during the statement period exceeds 10% but is less than 40% of the total amount of all
10 campaign expenditures for that period or the total amount exceeds \$10,000 but is less than
11 \$25,000.

12 (6) Committee Naming.

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

15 (B) Consideration and Factors.

16 (i) Exclusions from the Tier Two Streamline Program include:

17 a. Name was intentionally misleading or ambiguous.

18 (ii) Violations eligible for possible inclusion in the Tier Two Streamline Program include:

19 a. Incorrect name caused advertisements to be incorrect.

20 b. Incorrect name failed to disclose a single major contributor, major donor, or sponsor.

21 c. The committee had activity over \$10,000 but less than \$50,000 for the reporting period
22 during which the committee name was incorrect.

23 (7) Advertising and Mass Mailing Disclosures.

1 (A) Eligibility Requirements: Correction of the advertisement or mass mailing, if
2 feasible, was done.

3 (B) Considerations and Factors.

4 (i) Violations eligible for possible inclusion in the Tier Two Streamline Program include:

5 a. The violation resulted from a lack of committee formation through ignorance of the
6 requirements and the committee raised and spent less than \$25,000.

7 b. The violation was inadvertent or negligent and was disclosed on a campaign statement
8 or report of the committee but is likely to result in confusion regarding the identity of a top
9 contributor, sponsor, controlling candidate, or ballot measure supported or opposed or whether
10 the advertisement is an independent expenditure.

11 c. The advertisement or mass mailing contains less than four missing or incorrect
12 disclosures or display requirements in the disclaimer, and included in those four is no more than
13 two of the following: (1) paid for by requirement, (2) top contributor information, (3) the
14 statement that the advertisement was not authorized by a candidate or committee controlled by a
15 candidate, or (4) the committee name requirement. Only one of the four can be a top contributor
16 that is incorrect or missing. A disclosure that fails to meet sizing requirements to the extent that
17 the disclosure is not legible to the average viewer is considered a “missing or incorrect
18 disclosure.”

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

20 (A) Considerations and Factors.

21 (i) Exclusions from the Tier Two Streamline Program include:

22 a. The lack of recordkeeping appears to be intentional.

23 (ii) Violations eligible for possible inclusion in the Tier Two Streamline Program include:

1 a. The inadvertent or negligent lack of recordkeeping inhibited audit efforts.

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

4 c. The inadvertent or negligent lack of recordkeeping may have inhibited discovery of
5 other violations.

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

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

10 (B) Considerations and Factors.

11 (i) Violations eligible for possible inclusion in the Tier Two Streamline Program include:

12 a. The gift giver is a named party in, or the subject of, a governmental decision before the
13 gift recipient or the gift recipient's agency but did not cause a conflict of interest.

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

15 c. The fair market value of the gift is more than \$200 over the gift limit but less than
16 \$1,000 over the gift limit.

17 (10) Major Donor Filers.

18 (A) Eligibility Requirements. To enter into a streamline settlement, an individual who
19 failed to timely file a campaign statement or report as a major donor committee must file the late
20 statement or report with the appropriate agency unless the relevant information was reported by
21 the person elsewhere or the FPPC determines that the information has been sufficiently disclosed
22 in the stipulation and/or other filings.

23 (B) Considerations and Factors.

1 (i) Exclusions from the Tier Two Streamline Program include:

2 a. The report missing was due within the last 16 days before the relevant election and was
3 not disclosed on a 24-Hour Report filed by the recipient of the contribution before the relevant
4 election.

5 (ii) Violations eligible for possible inclusion in the Tier Two Streamline Program include:

6 a. Contributions for the calendar year were less than \$150,000 and less than three
7 statements or reports were late during that calendar year.

8 (11) Behested Payment Reports.

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

13 (A) Considerations and Factors.

14 (i) Exclusions from the Tier Two Streamline Program include:

15 a. A perceived or actual personal benefit. A “perceived personal benefit” means the
16 Enforcement Chief believes the evidence sufficiently supports a reasonable belief or strong
17 suspicion that the official received a benefit, which includes evidence of a direct benefit to a
18 family member of the official.

19 b. The maker of the payment is a named party in, or the subject of, a governmental
20 decision before the behestor or the behestor’s agency while the decision is pending and within
21 three months before and for three months following the date a final decision is rendered.

22 “Maker” includes the individual decision maker, the entity and any agent acting as an

1 intermediary. For governmental decisions regarding legislation, “governmental decision”
2 includes only nongeneral legislation as defined in Section 87102.6.

3 c. The amount to be reported on the behested payment report exceeded \$150,000.

4 d. The amount required to be reported, when divided by the number of public officials
5 participating in the behest, was \$150,000 or more.

6 Note: Authority cited: Section 83112, Government Code. Reference: Sections 1090, 84104,
7 87100, Government Code.