

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations)

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

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

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

(a) Types of Violations Eligible.

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

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

(3) Unreported Lobbying Activity, Contributions or Expenditures.

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

(5) Campaign Bank Account.

(6) Committee Naming.

(7) Advertising and Mass Mailing Disclosures.

(8) Recordkeeping.

(9) Gift Limit.

(10) Slate Mailer Organization Filing Issues.

(11) Proper Recusal of a Conflict of Interest.

(12) Major Donor Notifications.

(13) Major Donor Filers.

(14) Behested Payment Reports.

(b) Penalty Amount. The streamline penalty for each violation is found in Regulation 18360.2.

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

(1) General Eligibility Requirements:

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

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

(2) Considerations and Factors.

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

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

(ii) Self-reported violations before public discovery.

(iii) Violations resulted in minimal public harm.

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

(v) Unsuccessful.

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

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

(viii) Low activity during the missing or late reporting period.

(ix) Small percentage of overall activity.

(x) Committee has terminated.

(xi) Fraudulent activity of other caused the violation.

(xii) Activity was reported by other participant in the transaction.

(xiii) Activity was reported timely on another campaign statement of the filer.

(xiv) For late statements and reports, activity was unrelated to the election that triggered filing requirements.

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

(B) Exclusions from both Streamline Programs include:

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

(ii) Presented the FPPC false or altered evidence.

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

- (iv) Evidence of intentional interference with a witness in the FPPC matter.
- (v) The extent and gravity of the public harm in the aggregate is more than minimal.
- (vi) Has other violations under review for prosecution that do not qualify for a streamline penalty.

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

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

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

(d) Specific Requirements for Eligibility.

(1) Late Statements and Reports.

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

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

(i) Considerations for a Warning Letter include:

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

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

(ii) Exclusions from the Streamline Program include:

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

b. The public official also had a conflict of interest violation under Sections 1090 or 87100 involving the undisclosed economic interest.

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

(i) Considerations for a Warning Letter include:

a. The committee had less than \$2,000 of activity for the statement period.

b. The committee filed an electronic (or paper) statement or report timely for the same period.

c. The committee meets the requirements for administrative termination.

d. The late statement or report was filed prior to the relevant election.

e. The statement due was a Form 470.

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

a. For all committees, participation in the Tier One Streamline Program is limited based on the population of the jurisdiction of the committee. The population numbers are based on the U.S. Census. Special districts will use the population scale of under 390,625 unless the population of the boundaries of the district are provided. For at large elections, use the entire population of the jurisdiction. For jurisdictions with districts, take the total population of the jurisdiction and divide by the number of districts. The campaign statement or report at issue was required to report contributions or expenditures totaling not more than:

1. \$16,700, for populations under 390,625;
2. \$23,900, for populations between 390,626-976,562;
3. \$34,200, for populations between 976,563-2,441,406;
4. \$48,900, for populations between 2,441,407-6,103,515;
5. \$69,900, for populations between 6,103,516-15,258,789;
6. \$100,000, for populations above 15,258,789.

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

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

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

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

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

(i) Considerations for a Warning Letter include:

- a. The lobbyist is a placement agent not active in the state.
- b. The lobbyist provided the report to the employer or firm who did not file the report.
- c. The total required activity to be reported for that reporting period was less than \$5,000.
- d. No history of not timely filing reports.
- e. The filer was ill or other extenuating circumstances.

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

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

b. Evidence that the filer tried to conceal lobbying activity.

c. An individual lobbied without registering.

d. Multiple reports not timely filed.

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

f. The undisclosed activity included campaign contributions.

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

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

(B) Considerations and Factors.

(i) Considerations for a Warning Letter include:

a. Information regarding the economic interest was reported elsewhere on the statement.

b. The aggregate value of the gift(s) or income received from the economic interest was minimal (i.e., less than \$500).

c. The filer has not performed the duties of the office/position for a significant period of time due to illness or otherwise.

(ii) Exclusions from the Streamline Program include:

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

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

(3) Unreported Lobbying Activity, Contributions or Expenditures.

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

(B) Considerations and Factors.

(i) Considerations for a Warning Letter include:

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

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

c. The committee meets the requirements for administrative termination.

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

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

a. Campaign Reporting: The total amount unreported is greater than the applicable population-based limit per reporting period on the committee otherwise found in this regulation.

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

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

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

(B) Considerations and Factors.

(i) Considerations for a Warning Letter include:

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

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

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

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

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

d. The person made personal use of campaign funds.

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

(5) Campaign Bank Account.

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

(B) Considerations and Factors.

(i) Considerations for a Warning Letter include:

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

b. The candidate or the candidate's wholly owned business is the source of 50% or more of the committee funds for the election.

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

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

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

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

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

c. The person made personal use of campaign funds.

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

(6) Committee Naming.

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

(B) Consideration and Factors.

(i) Considerations for a Warning Letter include:

a. Name included essentially all required elements and was not misleading.

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

a. Name was misleading or ambiguous.

b. Incorrect name caused advertisements to be incorrect.

c. Incorrect name failed to disclose a major contributor, major donor, or sponsor.

d. The committee had activity over \$10,000 for the reporting period during which the committee name was incorrect.

(7) Advertising and Mass Mailing Disclosures.

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

(B) Considerations and Factors.

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

a. The violation is likely to result in confusion regarding the identity of the candidate or committee responsible for the advertisement, or a top contributor, sponsor, controlling candidate, or ballot measure supported or opposed; whether the advertisement is an independent expenditure; or whether the advertisement was authorized by a candidate or candidate-controlled committee.

b. The advertisement or mass mailing contains two or more missing or incorrect disclosures or display requirements in the disclaimer and one or more of the missing or incorrect disclosures is: (1) the committee name requirement, (2) top contributor information (top contributor must be substantially correct), or (3) the statement that the advertisement was not authorized by a candidate or committee controlled by a candidate. A disclosure that fails to meet sizing requirements to the extent that the disclosure is not legible to the average viewer is considered a “missing or incorrect disclosure” and not “substantially correct.”

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

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

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

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

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

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

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

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

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

(A) Considerations and Factors.

(i) Considerations for a Warning Letter include:

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

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

a. The lack of recordkeeping inhibited audit efforts.

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

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

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

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

(B) Considerations and Factors.

(i) Considerations for a Warning Letter include:

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

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

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

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

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

(10) Slate Mailer Organization Campaign Filings.

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

(11) Proper Recusal for a Conflict of Interest.

(A) Eligibility Requirements: An individual may qualify to participate in the Commission's Tier One Streamline Program if the individual identified a potential conflict of interest regarding the governmental decision and did not take part in the decision but failed to either:

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

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

(12) Major Donor Notifications.

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

(B) Considerations and Factors.

(i) Considerations for a Warning Letter include:

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

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

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

(13) Major Donor Filers.

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

(B) Considerations and Factors.

(i) Considerations for a Warning Letter include:

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

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

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

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

b. The contributions 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.

(14) Behested Payment Reports.

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

(B) Considerations and Factors.

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

a. A perceived or actual personal benefit. 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.

(ii) Considerations for a Warning Letter include:

- a. First-time behested payment report filer.
- b. The report was filed before Enforcement contact, complainant disclosure or media exposure.
- c. No history of filing late behested payment reports.
- d. The amount reported late was \$30,000 or less for a single behested payment report.
- e. The report was filed within 100 days of when it was due.
- f. The behestor provides evidence that more than two efforts were made to obtain the information timely from the maker of the payment.
- g. Only a single behested payment report was late in a six-month period.

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

a. 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. “Maker” includes the individual, the entity and any agent acting as an intermediary. For governmental decisions regarding legislation, “governmental decision” includes only nongeneral legislation as defined in Section 87102.6.

- b. The amount reported late was \$50,000 or more for a single behested payment report.
- c. The amount required to be reported, when divided by the number of public officials participating in the behest, was \$50,000 or more.

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

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

HISTORY

1. New section filed 2-25-2019; operative 3-27-2019 pursuant to Cal. Code Regs., tit. 2, section 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2019, No. 9).
2. Amendment filed 2-22-2021; operative 3-24-2021 pursuant to Cal. Code Regs., tit. 2, section 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2021, No. 9).
3. Amendment of subsections (d)(5)(B)(i)b. and (d)(11)(A) filed 5-12-2021; operative 6-11-2021 pursuant to Cal. Code Regs., tit. 2, section 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2021, No. 20).