

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

§ 18360.3. Eligibility Requirements and Considerations - Tier Two Streamline Program.

The Chief of Enforcement may include or exclude any filer from receiving a Tier Two streamline penalty based upon mitigating or aggravating circumstances and the totality of the circumstances, including situations where an exclusion may apply. Violations excluded from Tier One Streamline Program can be considered for Tier Two Streamline penalties if aggravating circumstances do not result in the exclusion from the program based on the criteria below. Excluded violations will be processed as Mainline Stipulations. A Mainline Stipulation generally results in a higher penalty and includes a full description of the violation and surrounding events.

(a) Types of Violations Eligible.

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

(11) 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) Exclusions from Tier Two Streamline Program 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.

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

(i) The same candidate, committee, or principal officer has paid a Tier One penalty to the Commission or received a Warning Letter from 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) To enter into a 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) Violations eligible for possible inclusion in the Tier Two Streamline Program include:

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

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

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

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

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

b. 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 \$50,000 or greater.

c. 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 and the contribution or expenditure was not reported on another report or statement filed by the committee before the election, unless the subject contribution or expenditure would have disclosed an advertisement or mass mailing paid for or sent by the committee, and the advertisement or mass mailing failed to disclose the name of the committee in accordance with Section 84502 or 84305.

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

a. 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) Exclusions from the Tier Two Streamline Program include:

- a. Evidence that the filer tried to conceal lobbying activity.
- b. An individual lobbied without registering.
- c. There was evidence of a substantial amount of activity not disclosed in connection with legislative or administrative actions actively lobbied during the period.
- d. The undisclosed activity included campaign contributions.

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

- a. The total required activity to be reported for that reporting period is greater than \$50,000 but less than \$100,000.
- b. Multiple reports not timely filed.

(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) Exclusions from the Tier Two Streamline Program include:

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

(ii) Violations eligible for possible inclusion in the Tier Two 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.

(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) Violations eligible for possible inclusion in the Tier Two 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 Regulation 18360.1 but less than \$100,000.

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

(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) Exclusions from the Tier Two Streamline Program include:

a. The person made personal use of campaign funds.

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

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

b. The percentage of cash contributions and expenditures of \$100 or more exceeds 25% but is not greater than 50% 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 but is not greater than \$25,000.

(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) Exclusions from the Tier Two Streamline Program include:

a. The person made personal use of campaign funds.

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

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

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

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

(6) Committee Naming.

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

(B) Consideration and Factors.

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

a. Name was intentionally misleading or ambiguous.

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

a. Incorrect name caused advertisements to be incorrect.

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

c. The committee had activity over \$10,000 but less than \$50,000 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) Violations eligible for possible inclusion in the Tier Two Streamline Program include:

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

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

c. The advertisement or mass mailing contains less than four missing or incorrect disclosures or display requirements in the disclaimer and included in those errors is no more than two of the following: (1) “ad paid for by” or “paid for by” requirement, (2) top contributor information (top contributor must be substantially correct), (3) the statement that the advertisement was not authorized by a candidate or committee controlled by a candidate, or (4) the committee name requirement. Only one of the errors can be a top contributor, and the top contributor must be substantially correct to be included in the Tier Two Streamline Program. 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.”

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

(A) Considerations and Factors.

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

a. The lack of recordkeeping appears to be intentional.

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

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

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

c. The inadvertent or negligent 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) Violations eligible for possible inclusion in the Tier Two 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 but did not cause a conflict of interest.

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 but less than \$1,000 over the gift limit.

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

a. The contribution 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.

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

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

(11) 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.

(A) Considerations and Factors.

(i) Exclusions from the Tier Two Streamline Program 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.

b. 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.

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

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

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

HISTORY

1. New section 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).