Amend 2 Cal. Code Regs., Section 18360.1 to read:

§ 18360.1. Eligibility Requirements and Considerations for Campaign Violations – Streamline (Tiers One and Two) and the Political Reform Education Program (PREP).

(a) General. If eligible, filers may voluntarily resolve violations of the Political Reform Act (the "Act") by completing the Political Reform Education Program ("PREP"), paying a Tier One Streamline penalty, or paying a Tier Two Streamline penalty.

(1) The Chief of Enforcement will determine the appropriate form and amount of penalty to offer in settlement for a violation depending on the circumstances unless an exclusion applies, in which case the Executive Director of the Commission, after receipt of a recommendation by the Chief of Enforcement, will determine the appropriate form and amount of penalty. Mitigating circumstances result in consideration of participation in PREP or a Tier One Streamline Penalty. Aggravating circumstances result in the consideration of a Tier Two Streamline penalty. A violation that is otherwise ineligible for PREP or a particular Streamline Tier may be considered for inclusion if another agency has already imposed a penalty or fee for the same violation. The Chief of Enforcement has the discretion to decline to charge particular counts after determining that an overall case is eligible for PREP or Streamline resolution.

(2) A stipulation for a Streamline penalty need not include a full description of the violation and surrounding events but it shall include sufficient information to identify the specific violation(s) being charged and demonstrate why a Streamline penalty is appropriate under the terms of this regulation.

(3) Nothing in this regulation shall limit the authority of the Chief of Enforcement to issue a warning letter where a violation of the Act is found but the seriousness of the offense is low, public harm is minimal, or other mitigating circumstances are present such that a monetary

fine is not warranted. A Streamline stipulation may identify counts to which the respondent admits liability without imposition of a monetary fine. Such a stipulation shall have the same legal effect as a warning letter for purposes of determining whether a respondent qualifies for PREP or either Streamline Tier for any subsequent violations of the same type.

(4) Nothing in this regulation shall limit the authority of the Commission to impose a Mainline penalty for a particular violation under any Section of the Act or other regulations relating to the Act, regardless of whether the violation is eligible for consideration of PREP or a Streamline penalty, where the seriousness of the offense, the public harm, or other aggravating circumstances are present such that a warning letter, participation in PREP, or a Streamline penalty is not warranted.

(b) Types of Campaign Violations Eligible for Resolution Under This Regulation.

(1) Late Campaign Statements or Reports.

(2) Unreported Contributions or Expenditures.

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

(4) Campaign Bank Account.

(5) Committee Naming.

(6) Advertising and Mass Mailing Disclosures.

(7) Slate Mailer Organization Filing Issues.

(8) Recordkeeping.

(9) Major Donor Notifications.

(10) Late Campaign Statements and Reports (Major Donor Filers).

(11) Contribution Limits.

(12) Section 84308.

(13) Recurring Contributions.

(c) Penalty Amount. Penalties are not issued for completion of PREP. The Streamline penalty amount for each type of violation is found in Regulation 18360.3.

(d) General Requirements for Eligibility, Considerations, and Exclusions.

(1) For purposes of this regulation, "small committees" for the purposes of this regulation is defined as city and county committees in jurisdictions with a population of one million or less and state assembly committees, and "large committees" for the purposes of this regulation is defined as city and county committees in jurisdictions with a population of over one million and state committees, including state senate committees.

(2) A Respondent is excluded from PREP if they do not meet all of the following eligibility criteria:

(A) Respondent meets all the requirements listed in the PREP agreement, and

(B) Respondent has not participated in PREP or been ordered to pay a penalty for the same type of violation listed in subsection (b) within five years of the date the current violation occurred.

(3) A Respondent is excluded from both Streamline Tiers if they do not meet all of the following eligibility criteria:

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

(B) Pay a proposed penalty by cashier's check, electronic payment, or money order in an amount as determined in Regulation 18360.3, and

(C) The same candidate, committee, or principal officer has not been ordered to pay a prior penalty to the FPPC for the same type of violation in the same Streamline Tier occurring within the last five years.

(4) A Respondent is excluded from PREP and both Streamline Tiers if evidence shows Respondent:

(A) Intended to conceal or deliberately violate the Act or regulations relating to the Act,

(B) Presented the FPPC false or altered evidence or made false statements to the FPPC regarding material facts,

(C) Intentionally interfered with a witness in the FPPC matter,

(D) Committed a violation where, considering the totality of the circumstances, the extent and gravity of the public harm is more than minimal, or

(E) Has other related violations under review for prosecution that are not eligible for PREP or a Streamline penalty.

(5) Compliance. Respondents must correct the underlying violation(s) by coming into compliance with the requirements of the Act prior to completing PREP or executing a Streamline stipulation. The Executive Director of the Commission, after receipt of a recommendation by the Chief of Enforcement, has discretion to waive this requirement where:

(A) The violation relates to non-filing, unreported information, or an advertising disclosure, and the FPPC determines that the outstanding information has been sufficiently disclosed in the stipulation or other public filings,

(B) One of the respondents is a committee, and the committee is being or has been administratively terminated,

(C) Failure to come into compliance would result in minimal public harm, or

(D) Other circumstances do not make it feasible for the respondents to come into compliance.

(e) Specific Requirements for Eligibility.

(1) Late Campaign Statements or Reports.

(A) A violation for late filing of a campaign statement or report, other than a 24 Hour-Report required to be filed by a committee as defined in Section 82013(a) and (b), is excluded from PREP and Tier One Streamline if the late filing at issue reported contributions and expenditures totaling more than $25,000 for small committees, or more than $50,000 for large committees.

(B) A violation for late filing of a 24 Hour-Report required to be filed by a committee as defined in Section 82013(a) and (b) is excluded from PREP and Tier One Streamline unless:

(i) The committee disclosed the contribution(s) or expenditure(s) on another statement or report filed by the committee before the election,

(ii) Another committee disclosed the contribution(s) or expenditure(s) on a timely-filed statement or report earlier than the last 16 days before the election, and the late filing at issue reported contributions and expenditures totaling no more than $25,000 for small committees or no more than $50,000 for large committees,

(iii) The committee raised or spent no more than $10,000 in connection with the total campaign, or

(iv) The committee was a candidate-controlled committee and the late-reported contribution(s) or expenditure(s) were made entirely from the controlling candidate's own personal funds.

(C) It shall be a factor for consideration of possible inclusion in PREP or Tier One Streamline if the amount required to be reported during the last 16 days before the election was de minimis in relation to the total campaign.

(D) A violation for late filing of a campaign statement or report, other than a 24 Hour-Report required to be filed by a committee as defined in Section 82013(a) and (b), is excluded from Tier Two Streamline if the late filing at issue reported contributions and expenditures totaling more than $50,000 for small committees or more than $100,000 for large committees.

(E) A violation for late filing of a 24 Hour-Report required to be filed by a committee as defined in Section 82013(a) and (b) is excluded from Tier Two Streamline if the late filing at issue reported contributions and expenditures totaling more than $25,000 for small committees or more than $50,000 for large committees.

(2) Unreported Contributions or Expenditures.

(A) A violation for unreported contributions or unreported expenditures is excluded from PREP and Tier One Streamline if the unreported contributions or unreported expenditures per campaign statement or report totaled more than $10,000 for small committees or more than $25,000 for large committees.

(B) A violation for unreported contributions or unreported expenditures is excluded from Tier Two Streamline if the unreported contributions or unreported expenditures per campaign statement or report totaled more than $50,000 for small committees or more than $100,000 for large committees.

(3) Cash Contribution(s) or Expenditure(s) of $100 or More. For purposes of this regulation, “cash” means legal tender, cashier's checks, or similar instruments which are not

drawn on the contributor's account and that does not include the name of the contributor on its face.

(A) A violation for cash contribution(s) or expenditure(s) of $100 or more is excluded from PREP and both Streamline Tiers if the Enforcement Division possesses evidence that:

(i) The majority of the cash of $100 or more was not timely disclosed on a campaign statement or report,

(ii) The campaign records were insufficient to determine if use of cash concealed other violations, or

(iii) The person made personal use of campaign funds.

(B) A violation for cash contribution(s) or expenditure(s) of $100 or more is excluded from PREP and Tier One Streamline if the total amount of cash for the reporting period was more than $2,500.

(C) A violation for cash contribution(s) or expenditure(s) of $100 or more is excluded from Tier Two Streamline if the total amount of cash of $100 or more for the reporting period was more than $5,000.

(D) For purposes of coming into compliance under subsection (d)(5), respondents who received a cash contribution from a source other than a controlling candidate’s own personal funds should return the amount to the source of the contribution or, if the source of a contribution cannot be located or is otherwise unavailable to receive the returned contribution, to the State of California General Fund.

(4) Campaign Bank Account.

(A) A violation of the campaign bank account requirement is excluded from PREP and both Streamline Tiers if the Enforcement Division possesses evidence that:

(i) The contributions or expenditures not deposited into or made from the campaign bank account were not reported prior to the relevant election,

(ii) The campaign records were insufficient to determine if use of a non-campaign bank account concealed other violations, or

(iii) The person made personal use of campaign funds.

(B) A violation of the campaign bank account requirement is excluded from PREP and Tier One Streamline if the total amount of contributions or expenditures not deposited into or made from the campaign bank account was more than $10,000, except that it may still be a factor for possible inclusion in PREP and Tier One Streamline if the activity outside the campaign bank account of more than $10,000 but no greater than $25,000 was timely reported on campaign statements and was the result of the candidate utilizing their personal funds.

(C) A violation of the campaign bank account requirement is excluded from Tier Two Streamline if the total amount of contributions or expenditures not deposited into or made from the campaign bank account was more than $25,000, except that it may still be a factor for possible inclusion in Tier Two Streamline if the activity outside the campaign bank account of more than $25,000 was timely reported on campaign statements and was the result of the candidate utilizing their personal funds.

(5) Committee Naming.

(A) A violation of the committee naming requirement is excluded from PREP and Tier One Streamline if the Enforcement Division possesses evidence that:

(i) The incorrect name was misleading or ambiguous,

(ii) The incorrect name caused advertisements to be incorrect and when included on an advertisement, the incorrect name was likely to result in confusion regarding the identity of the committee responsible for the advertisement, or

(iii) The incorrect name failed to disclose at least one sponsor.

(B) It shall be a factor for consideration of possible inclusion in PREP or Tier One Streamline if the committee had contributions or expenditures of $10,000 or less for the reporting period during which the committee's name was incorrect.

(C) A violation of the committee naming requirement is excluded from Tier Two Streamline the Enforcement Division possesses evidence that the incorrect name failed to disclose more than one sponsor.

(D) It shall be a factor for consideration of possible inclusion in Tier Two Streamline if the committee had contributions or expenditures of $50,000 or less for the reporting period during which the committee's name was incorrect.

(6) Advertising and Mass Mailing Disclosures.

(B) A violation is excluded from PREP and Tier One Streamline if the Enforcement Division possesses evidence that:

(i) The violation was likely to result in confusion regarding the identity of the candidate or committee responsible for the advertisement, or

(ii) The advertisement or mass mailing contained two or more of the following missing or incorrect disclosures: (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. Each missing or incorrect top contributor is considered a single “missing or incorrect disclosure.”

(C) It shall be a factor for consideration of possible inclusion in Tier Two Streamline if:

(i) The violation resulted from a lack of committee formation through ignorance of the requirements and the committee raised not more than $25,000 and spent not more than $25,000,

(ii) The violation was disclosed on a campaign statement or report of the committee but was likely to result in confusion regarding the identity of the candidate or committee responsible for the advertisement,

(iii) The advertisement or mass mailing contained no more than three of the following missing or incorrect disclosures: (1) top contributor information (top contributor must be substantially correct), (2) the statement that the advertisement was not authorized by a candidate or committee controlled by a candidate, or (3) the committee name requirement. If there are two or more missing or incorrect top contributors, the advertisement or mass mailing does not meet the requirements of this inclusion.

(7) Slate Mailer Organization Filing Issues. It shall be a factor for consideration of possible inclusion in Tier One Streamline if a slate mailer organization timely filed campaign statements and reports as a committee under the Act disclosing essentially all the information required to be reported by the late filed slate mailer organization campaign statements and reports.

(8) Recordkeeping. Violations shall be charged by calendar year unless discretion is used by the Chief of Enforcement.

(A) A violation of the recordkeeping requirements is excluded from PREP and Tier One Streamline if the Enforcement Division possesses evidence that:

(i) The lack of recordkeeping inhibited a FPPC or FTB audit,

(ii) The lack of recordkeeping made it impracticable to determine if the committee substantially complied with the Act's campaign reporting requirements, or

(iii) The lack of recordkeeping may have inhibited discovery of other violations.

(C) It shall be a factor for consideration of possible inclusion in Tier Two Streamline if the violation was inadvertent or negligent.

(9) Major Donor Notifications. It shall be a factor for possible inclusion in Tier One Streamline if the committee failed to timely send out major donor notifications required by Section 84105.

(10) Late Campaign Statements and Reports (Major Donor Filers).

(A) A violation for late filing of a campaign statement or report by a major donor filer is excluded from PREP or Tier One Streamline if either:

(i) The contributions for the calendar year totaled more than $75,000, or

(ii) The contributions required at least one 24-Hour Report to be filed within the last 16 days before the relevant election and neither the donor nor the recipient of the contribution(s) timely filed the required report(s).

(B) A violation for late filing of a campaign statement or report by a major donor filer is excluded from Tier Two Streamline if either:

(i) The contributions for the calendar year totaled more than $150,000, or

(ii) The contributions totaled more than $100,000 and required at least one 24-Hour Report to be filed within the last 16 days before the relevant election and neither the donor nor the recipient of the contribution(s) timely filed the required report(s).

(11) Contribution Limits.

(A) A violation of the contribution limits is excluded from PREP and Tier One Streamline if the contribution(s) from that source totaled more than $500 over the applicable limit or ban.

(B) It shall be a factor for consideration of possible inclusion in PREP or Tier One Streamline if:

(i) The contribution was reported timely on the correct campaign statement or report of the committee, or

(ii) The contribution was outside the 90-day period preceding the relevant election.

(C) A violation of the contribution limits is excluded from Tier Two Streamline if the contribution(s) from that source totaled more than $1,000 over the applicable limit or ban.

(D) It shall be a factor for consideration of possible inclusion in Tier Two Streamline if the circumstances of the violation were limited to either of the following:

(i) The contribution was not reported timely on the correct campaign statement or report of the committee, but only if the total amount over the limit was not more than $500, or

(ii) The contribution was within the 90-day period preceding the relevant election, but only if the total amount over the limit was not more than $500.

(E) For purposes of coming into compliance under subsection(d)(5), Respondents who violated Sections 85301, 85302, 85303, 85316, or 85702 by making or receiving contribution(s) over the limit or ban must refund the amount over the contribution limit or unlawfully obtained contribution(s) back to the source of the contribution(s) or, if the source of a contribution(s) cannot be located or is otherwise unavailable to receive the returned contribution, to the State of California General Fund.

(12) Section 84308.

(A) A violation is excluded from PREP and both Streamline Tiers if no disclosure was made prior to a decision being rendered in the proceeding.

(B) A violation is excluded from PREP and Tier One Streamline if the contribution that violated Section 84308 was greater than the limit by $500 or more.

(C) It shall be a factor for consideration of possible inclusion in PREP or Tier One Streamline if:

(i) An untimely disclosure was made prior to a decision being rendered in the proceeding,

(ii) An untimely return of a contribution was late by 30 days or less, or

(iii) An officer violated Section 84308 as a result of making a good faith, but inaccurate determination that a person did not qualify as a "participant."

(D) A violation is excluded from Tier Two Streamline if the contribution that violated Section 84308 was greater than the limit by $1,000 or more.

(E) It shall be a factor for consideration of possible inclusion in Tier Two Streamline if an untimely return of a contribution was late by more than 30 days.

(13) Recurring Contributions.

(A) A violation of the recurring contribution requirements of the Act is excluded from Tier One Streamline if the recurring contributions, from that source in the aggregate, totaled more than $10,000.

(B) It shall be a factor for consideration of possible inclusion in Tier One Streamline if the circumstances of the violation were limited to any of the following:

(i) The recurring contribution solicitation required affirmative consent from the person making the recurring contribution but was not sent with the initial solicitation but was sent in later solicitations,

(ii) The recurring contribution solicitation did not provide all necessary information to cancel the recurring contribution in the majority of the communications with the contributor that concerned the contribution,

(iii) The recurring contribution was accepted in response to a solicitation that did not require affirmative consent, was returned to the contributor after 14 days but before 60 days of the earlier of receipt of a request from the contributor to return the contribution or the date on which the candidate or committee becomes aware that the solicitation of the recurring contribution was in violation, or

(iv) The recurring contribution was accepted after a contributor requested to cancel a recurring contribution and not returned within 14 days but before 60 days of the request to cancel the recurring contribution.

(C) For purposes of coming into compliance under subsection(d)(5), Respondents who received recurring contributions unlawfully under Section 85701.5 should refund the amount of the unlawfully obtained contribution(s) back to the source of the contribution(s) or, if the source of a contribution(s) cannot be located or is otherwise unavailable to receive the returned contribution, to the State of California General Fund.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 83116.5, Government Code.