Amend 2 Cal. Code Regs., Section 18360.2 to read:

§ 18360.2. Eligibility Requirements and Considerations for Ethics and Lobbying 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(s) 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 Ethics and Lobbying Violations Eligible for Resolution Under This Regulation.

(1) Late Statement of Economic Interests.

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

(3) Late Lobbying Reports.

(4) Unreported Lobbying Activity.

(5) The Making or Receipt of a Gift Over the Limit.

(6) Improper Recusal for a Conflict of Interest.

(7) Late Behested Payment Reports.

(8) Unreported Information on a Behested Payment Report.

(c) Penalty Amount. Penalties are not issued 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) 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.

(2) 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 person 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 Statement of Economic Interests.

(A) A violation for late filing of a Statement of Economic Interests is excluded from PREP and both Streamline Tiers if the Enforcement Division possesses evidence that the filer also has a conflict of interest violation under Government Code Sections 1090 or 87100 involving a late-disclosed economic interest.

(B) A violation for late filing of a Statement of Economic Interests is excluded from PREP or Tier One Streamline if the Enforcement Division possesses evidence that a late-disclosed economic interest was from a source that had business before or regularly had business before the filer's agency.

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

(A) A violation for an unreported economic interest on a Statement of Economic Interests is excluded from PREP and both Streamline Tiers if the Enforcement Division possesses evidence that the filer also has a conflict of interest violation under Government Code Sections 1090 or 87100 involving the unreported economic interest.

(B) A violation for an unreported economic interest on a Statement of Economic Interests is excluded from PREP or Tier One Streamline if the Enforcement Division possesses evidence that the undisclosed economic interest was from a source that had business before or regularly had business before the filer's agency.

(3) Late Lobbying Reports.

(A) A violation for late filing of a lobbying report is excluded from PREP and Tier One Streamline if the Enforcement Division possesses evidence that:

(i) The total required activity to be reported was more than $50,000,

(ii) The individual lobbied without registering, or

(iii) The undisclosed activity included campaign contributions.

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

(i) Only one lobbying report was not timely filed; or

(ii) There was no evidence of a substantial amount of late-reported activity in connection with legislative or administrative actions actively lobbied.

(C) A violation for late filing of a lobbying report is excluded from Tier Two Streamline if the total activity required to be reported was more than $100,000.

(4) Unreported Lobbying Activity.

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

(i) The total unreported activity was more than $50,000,

(ii) An individual lobbied without registering, or

(iii) The undisclosed activity included campaign contributions.

(B) It shall be a factor for consideration of possible inclusion in PREP or Tier One Streamline if the Enforcement Division possesses evidence that:

(i) The unreported activity was less than 20% of the activity required to be reported, or

(ii) There was no evidence of a substantial amount of activity not disclosed in connection with legislative or administrative actions actively lobbied during the period.

(C) A violation for unreported lobbying activity is excluded from Tier Two Streamline if the total unreported activity was more than $100,000.

(5) The Making or Receipt of a Gift Over the Limit.

(A) A violation of the gift limit is excluded from PREP and both Streamline Tiers if the Enforcement Division possesses evidence that the filer also has a conflict of interest violation under Government Code Sections 1090 or 87100 involving the source of the gift.

(B) A violation of the gift limit is excluded from PREP or Tier One Streamline if the Enforcement Division possesses evidence that the fair market value of the gift was more than $200 over the gift limit.

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

(i) The filer-timely reported the gift on a Statement of Economic Interests, if required, or

(ii) The gift giver was not a named party in, or the subject of, a governmental decision before the filer or the filer's agency.

(D) A violation of the gift limit is excluded from Tier Two Streamline if the Enforcement Division possesses evidence that the fair market value of the gift was more than $1,000 over the gift limit and the filer did not return the gift unused or reimburse the source of the gift for the difference between the gift's fair market value and the applicable gift limit prior to the date the gift was required to be disclosed.

(6) Improper Recusal for a Conflict of Interest.

(A) A violation of the Act's requirements for proper recusal for a conflict of interest is excluded from both Streamline Tiers if the Enforcement Division possesses evidence that the Respondent also has a conflict of interest violation under Government Code Sections 1090 or 87100.

(B) It shall be a factor for consideration of possible inclusion in Tier One Streamline if the circumstances of the violation were such that the Respondent identified a potential conflict of interest regarding the governmental decision and did not take part in the decision but failed to complete no more than one of the following steps:

(i) Publicly identify the financial interest that gave 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 was concluded.

(C) It shall be a factor for consideration of possible inclusion in Tier Two Streamline if the circumstances of the violation were such that the Respondent identified a potential conflict of interest regarding the governmental decision and did not take part in the decision but failed to complete both of the steps listed in subsection (B).

(7) Late Behested Payment Reports.

(A) A violation for a late behested payment report is excluded from PREP and both Streamline if the Enforcement Division possesses evidence that:

(i) The late-reported behested payment resulted in a perceived or actual personal benefit. For purposes of this regulation, a “perceived personal benefit” means a reasonable belief or strong suspicion that the Respondent received a benefit, which includes evidence of a direct benefit to a family member of the Respondent, or

(ii) The maker of the late-reported behested payment was a named party in, or the subject of, a proceeding before the Respondent’s agency at the time of the payment or within the 12 months prior to the payment governmental decision before the Respondent or the Respondent's agency while the decision was pending and within three months before and for three months following the date a final decision was rendered. For purposes of this regulation, “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. “Proceeding” and “before the Respondent or the Respondent’s agency” has the same meaning as defined in Regulation 18424.

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

(i) The amount reported late was $50,000 or less for monetary payments or $70,000 or less for non-monetary payments, for a single behested payment report, or

(ii) The amount required to be reported, when divided by the number of public officials participating in the behest, was $50,000 or less.

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

(i) The amount to be reported on a single, late behested payment report was not more than $150,000, or

(ii) The amount required to be reported, when divided by the number of public officials participating in the behest, was not more than $150,000.

(8) Unreported Information on a Behested Payment Report.

(A) A violation for unreported information on a behested payment report is excluded from PREP and both Streamline Tiers if the Enforcement Division possesses evidence that the behested payment resulted in a perceived or actual personal benefit. For purposes of this regulation, a "perceived personal benefit" means a reasonable belief or strong suspicion that the Respondent received a benefit, which includes evidence of a direct benefit to a family member of the Respondent.

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

(i) The behested payment was $50,000 or less for monetary payments or $70,000 or less for non-monetary payments, for a single behested payment report that lacks required information,

(ii) The amount of the behested payment, when divided by the number of public officials participating in the behest, was $50,000 or less for a single behested payment report that lacks required information, or

(iii) the violation was a failure to disclose a proceeding under Regulation 18424 and the elected officer or PUC member either did not participate in the proceeding or participated only to the extent that such participation was legally required under Section 87101.

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

(i) The behested payment was not more than $150,000 for a single behested payment report that lacks required information,

(ii) The amount of the behested payment, when divided by the number of public officials participating in the behest, was not more than $150,000 for a single behested payment report that lacks required information,

(iii) The violation was a failure to disclose a proceeding under Regulation 18424 and the proceeding concerned a direct request from the agency to the payor, such as a grant application or modification of existing infrastructure provided by the payor, or

(iv) The violation involved failure to disclose status as a founding member of the payee organization or a position on an honorary or advisory board of the payee organization.

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