Adoption Discussion:

Proposed Amendments to Regulations 18360.1-18360.3

Political Reform Education Program and Streamline Resolution Program for Low-Level Enforcement Violations

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Overview of PREP and Streamline Programs

- Efficient resolution of less serious, unintentional violations.
- PREP: Education instead of a fine.
- Streamline: Lower fines and less-detailed stipulations.
  - Tier One and Tier Two.
- Strict eligibility criteria.
- Currently: Approved by the Chief of Enforcement rather than the Commission.

Structure of the Regulations

18360.1: Eligibility criteria - Campaign violations.

18360.2: Eligibility criteria - Ethics & Lobbying violations.

18360.3: Penalties.

Overview of Proposed Changes

Procedural changes to clarify:

- Eligibility criteria (mandatory vs. advisory).
- Use of discretion; Executive Director must sign off.
- Conditions for securing compliance; Executive Director must sign off.
- Information to include in stipulation.
- Separate process for warning letters.

Overview of Proposed Changes

Some ***substantive*** changes:

- Adding a new violation category: Unreported Information on a Behested Payment Report.
- Allow violations to be considered for PREP/Streamline if another agency has already imposed a penalty or fee for the same violation.
- Eliminate percentage threshold for bank account violations.
- Remove Section 84308 violations from Streamline where no timely disclosure was made.

Procedural Change:
Eligibility Criteria (mandatory vs. advisory)

Current regulations:

- Refer variously to “considerations,” “eligibility,” and “exclusions.”
- Relationship between these is unclear.

Proposed amendments:

- Use consistent terminology to make clear what is mandatory versus advisory:
  - “A violation is excluded if…”
  - “It shall be a factor for consideration of possible inclusion if…”

Procedural Change:
Use of discretion

Current regulations:

"The Chief of Enforcement will determine the appropriate form and amount of penalty to offer in settlement for a violation depending on the circumstances."

- ➢ Unclear how this applies to exclusions.

Proposed amendment:

"The Chief of Enforcement will determine the appropriate form and amount of penalty to offer in settlement for a violation depending on the circumstances <u>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</u>."

Procedural Change:
Conditions for securing compliance

Current regulations:

- Compliance is not listed among the general eligibility criteria; but
- Each violation type contains compliance requirements (and sometimes exceptions).

Procedural Change:
Conditions for securing compliance

Proposed amendments:

"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 unreported information, and the FPPC determines that the 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."

Procedural Change:
Information to include in stipulation

Current regulations:

- Silent as to what information must be included in a streamline stipulation; except
- Refers to mainline cases where "the stipulation includes a full description of the violation and surrounding events."

Proposed amendment:

"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."

DESCRIPTION OF VIOLATION:

Campaign Statement/Report Late Filer

Tier	Count	Statement/Report	Reporting Period	Due Date	Date Filed	Describe Reportable Activity	Penalty

TOTAL PENALTY: $_____

This matter is eligible for a streamline resolution under the criteria provided in Regulation 18360.1 [, and none of the applicable exclusions apply to restrict inclusion of a violation in the proposed Tier].

[Discretion was applied in this matter for Counts [Numbers] and was approved by the Executive Director on [Date]. The following facts support the use of Discretion: [Add Explanation]]

[The following applicable factors were considered and present in the matter:

(1) […]

(2) […]]

Filer is a [Type of Committee].

Procedural Change:
Separate process for warning letters

Current regulations:

- Include criteria for issuing warning letters in cases otherwise eligible for PREP or Streamline.
- This parallel authority results in confusion regarding the procedural and substantive requirements for issuance of a warning letter in particular cases.

Proposed amendments:

- “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 for which the respondent is receiving a warning letter in lieu of participation in PREP or receipt of a Streamline penalty. 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 Section of the Act.”

Substantive Change:

Add a new category of eligible violation: “Unreported Information on a Behested Payment Report.”

- Excluded if any evidence of perceived or actual personal benefit.

- PREP or Tier One Streamline if below $50,000 ($70,000 for non-monetary payments) or official did not participate in the proceeding/participation was legally required.

- Tier Two Streamline if:
    - Below $150,000,
    - 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
    - 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.

Substantive Change:

Allow violations to be considered for PREP/Streamline if another agency has already imposed a penalty or fee for the same violation:

> "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."

Substantive Changes: Miscellaneous

- Add additional mitigating factors for inclusion of late-filed 24-Hour Reports.
- Decrease the eligibility thresholds for cash contribution violations.
- Harmonize Section 84308 eligibility criteria with recent changes to that law; remove eligibility where no timely disclosure of contribution was made.
- Eliminate percentage threshold for bank account violations.
- Include gift limit violations where the filer returned the gift unused or reimbursed the overage prior to reporting deadline.
- Harmonize behested payment eligibility criteria with information required to be disclosed on a Form 803.
- Adjust the penalty range for Tier One Recurring Contribution violations.

Questions?