

# Prenotice 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 lower-level violations.
- PREP: Education instead of a fine.
- Streamline: Lower fines and less-detailed stipulations.
  - Tier One and Tier Two.
- Strict eligibility criteria.
- Approved by the Chief of Enforcement rather than the Commission.



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# Structure of the Regulations

18360.1: Eligibility criteria - Campaign violations.

18360.2: Eligibility criteria - Ethics & Lobbying violations.

18360.3: Penalties.



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# Overview of Proposed Changes

***Procedural*** changes to clarify:

- Eligibility criteria (mandatory vs. advisory).
- Use of discretion in borderline cases.
- Conditions for securing compliance.
- Information to include in stipulation.
- Separate process for warning letters.

Some ***substantive*** changes to harmonize with existing laws or recalibrate in light of experience.



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# 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...”



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# Procedural Change:

## Use of discretion in borderline cases

### *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 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.”



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# 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).

## *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 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.”



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# 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.”



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# 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.”



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# Substantive Changes

- 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.
- Eliminate exclusion for multiple lobbying reports not timely filed.
- 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?

