



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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Fair Political Practices Commission

Memorandum

To: Chair Remke and Commissioners Casher, Eskovitz, Wasserman, and Wynne

From: Galena West, Acting Chief of Enforcement
Milad Dalju, Commission Counsel

Subject: Review and Proposed Changes to Enforcement Division's Streamlined Programs

Date: May 11, 2015

INTRODUCTION AND BACKGROUND

The Enforcement Division analyzes and processes over 1,500 complaints per year. Throughout its history, Enforcement has grappled with the correct level of prosecution for individuals and committees who have violated the Political Reform Act ("Act")¹ but have a lesser degree of public harm associated with their violation for a variety of reasons. As a result, as early as 1999, Enforcement proposed handling these cases through a streamlined procedure where the fines are reduced and the *Stipulation, Decision and Orders* ("Stipulation") presented to the Fair Political Practices Commission (the "Commission") are more abbreviated and standardized. Enforcement has been successfully managing the streamlined programs since their inception.

The purpose of this memorandum is to present the Commission with Enforcement's recommendations for the existing streamlined programs and propose additional types of violations for new streamlined programs. This comprehensive overview of all streamlined programs includes proposed guidelines, penalty amounts, and a stipulation template for each program. The recommendations for the criteria presented follow a review and analysis of Enforcement cases both presently being considered and those previously adopted by the Commission.

¹ All statutory references are to the Political Reform Act of 1974 found in Government Code Section 81000 et seq.

RECOMMENDATIONS

The streamlined programs presented include:

- 1) Failing to timely file a Statement of Economic Interests (“SEI”).
- 2) Failing to timely report an economic interest on an SEI.
- 3) Failing to timely file a campaign statement or report.
- 4) Failing to timely report information regarding contributions received or expenditures made.
- 5) Failing to timely file a lobbyist, lobbying firm, lobbyist employer, lobbying coalition, or \$5,000-filer report.
- 6) Failing to timely pay the recipient committee \$50 annual fee.

1. SEI Non-Filer

Public officials and candidates for public office are required disclose their economic interests by filing SEIs. SEIs are required to be filed when a candidate for elective office declares his or her candidacy, when a public official assumes office, on an annual basis while serving as a public official, and when the public official leaves office. The Commission has determined that there is a strong public interest in the timely filing of SEIs and a need to resolve SEI non-filing cases expeditiously to obtain prompt compliance with the law.

The failure to timely file a SEI qualifies for the streamlined program if:

- a. The SEI is filed with the appropriate agency prior to the Stipulation being presented to the Commission;
- b. The filer does not have other violations under review for prosecution;
- c. The filer has not received a penalty from the Commission² for failing to timely file an SEI or failing to timely report a qualifying economic interest; and
- d. There is no evidence of intent to conceal.

Enforcement has discretion to include or exclude any case from the program based upon mitigating and aggravating circumstances. Aggravating circumstances include: prior non-filing history, prior Enforcement prosecutions, gifts or income that were received from a source that was regulated by or had business before the filer’s agency during the period covered by the SEI, or accompanying violations. Mitigating circumstances include: no longer in office, illness, or other extenuating circumstances.

If the case qualifies for the streamlined program, Enforcement offers the filer a streamlined stipulation (see Exhibit 1) with a penalty based on the following tiered structure:

² This does not include filing fines issued by the Technical Assistance Division of the Fair Political Practices Commission.

Tier	Penalty per SEI not timely filed
1 – Compliance in response to first Enforcement contact.	\$200
2 – Compliance prior to issuance of a probable cause report.	\$400
3 – Compliance prior to issuance of an accusation.	\$600 – \$800
4 – Compliance prior to adoption of a default decision.	\$800 – \$1,000

2. SEI Non-Reporter

Public officials are required to report all defined, disclosable economic interests on their SEIs. The requirements to disclose fall into two categories: (1) officials holding positions specified in Section 87200, who are required to disclose the broadest range of financial interests; and (2) officials holding agency positions that involve participation in government decisions that have financial impacts. These latter positions are designated in the agency's conflict-of-interest code and disclosure for each position is tailored to the scope of the official's job duties.

The failure to timely report an economic interest on an SEI qualifies for the streamlined program if:

- a. The SEI is amended to include all pertinent economic interests and filed with the appropriate agency prior to the Stipulation being presented to the Commission;
- b. The unreported economic interests did not cause the filer to have a conflict of interest;
- c. The filer does not have other violations under review for prosecution;
- d. The filer has not received a penalty from the Commission³ for violating the annual gift limit, failing to timely file an SEI, or failing to timely report a qualifying economic interest; and
- e. There is no evidence of intent to conceal.

Enforcement has discretion to include or exclude any case from the program based upon mitigating and aggravating circumstances. Aggravating circumstances include: prior non-filing history, prior Enforcement prosecutions, accompanying violations, or gifts or income were received from a source that was regulated by or had business before the filer's agency during the period covered by the SEI. Mitigating circumstances include: no longer in office, level of sophistication, information is reported

³ This does not include filing fines issued by the Technical Assistance Division of the Fair Political Practices Commission.

on another schedule, value of gifts received is below \$100, illness, or other extenuating circumstances.

If the case qualifies for the streamlined program, Enforcement offers the filer a streamlined stipulation (see Exhibit 2) with a penalty based on the following tiered structure:

Tier	Penalty per SEI that did not include all qualifying economic interests
1 – Compliance in response to first Enforcement contact.	\$100
2 – Compliance prior to issuance of a probable cause report.	\$300
3 – Compliance prior to issuance of an accusation.	\$600 – \$800
4 – Compliance prior to adoption of a default decision.	\$800 – \$1,000

3. Campaign Statement/Report Non-Filer

Candidates, elected officers, and committees are required to timely file semiannual statements, preelection statements, 24-hour reports,⁴ 10-day reports,⁵ supplemental preelection statements, and supplemental independent expenditure reports. Many times, the committees that fail to timely file these statements or reports are part of a losing effort, have raised and spent little to no money, missed a deadline, or are unsophisticated filers. The Major Donor Streamlined Program and the Late Contribution Report Streamlined Program are included in this more comprehensive program that addresses violations that are similar in type and harm as those already in the Major Donor and Late Contribution Report programs. To treat these cases more equitably, Enforcement is proposing expanding these programs so that the analysis can be based on the public harm and identified criteria instead of cataloged by type of report or statement.

The failure to timely file a campaign statement or report qualifies for the streamlined program if:

- a. The statement or report is filed disclosing all reportable activity prior to the Stipulation being presented to the Commission;
- b. The filer has not has not received a penalty from the Commission in the past five years for failing to timely file a campaign statement or report, or failing to timely report a contribution received or expenditure made;

⁴ “24-hour reports” refers to reports pursuant to Sections 84203, 84204, 85309, subds. (a) and (b), and 85500, subd. (a).

⁵ “10-day reports” refers to reports pursuant to Section 85309, subds. (c) and (d) as well as Paid Spokesperson Reports (Section 84511) and Verification of Independent Expenditures Form 462 (Section 84213).

- c. The committee does not have more than \$25,000 of contributions received or expenditures made per campaign statement; and
- d. There is no evidence of intent to conceal.

Additional factors include:

- a. The amount the committee raised or spent with regard to the relevant election;
- b. Whether all paper statements and reports were timely filed and the committee was a first-time electronic filer;
- c. Whether the filer is in office, or was at the time of the violation;
- d. Whether the majority or large amount of contributions or expenditures were not disclosed prior to the relevant election;
- e. Whether contributions made or received were reported timely at the other end of the transaction; and
- f. Whether major donors were notified of their filing obligation.

Enforcement has discretion to include or exclude any case from the program based upon mitigating and aggravating circumstances. Aggravating circumstances include: prior non-filing history, prior Enforcement prosecutions, or accompanying violations. Mitigating circumstances include: filer is no longer in office or never obtained office, the committee had less than \$1,000 of activity, all electronic statements were filed timely, the committee meets the requirements for administrative termination, or filer was ill or other extenuating circumstances.

If the case qualifies for the streamlined program, Enforcement offers the filer a streamlined stipulation (see Exhibit 3) with a penalty based on the following tiered structure:

Tier	Penalty⁶ per statement not timely filed (for preelection, supplemental, and semiannual) or per day for reports
1 – Compliance in response to first Enforcement contact.	\$200, plus 1% of contributions received or expenditures made, whichever is greater.
2 – Compliance prior to issuance of probable cause report.	\$400, plus 1% of contributions received or expenditures made, whichever is greater.
3 – Compliance prior to issuance of an accusation.	\$800, plus 1% of contributions received or expenditures made, whichever is greater.
4 – Compliance prior to adoption of a default decision.	\$1,000, plus 1% of contributions received or expenditures made, whichever is greater.

⁶ No streamlined program penalty will exceed the statutory limit of \$5,000 per violation (Section 83116).

4. Campaign Statement/Report Non-Reporter

Section 84211 requires that every campaign statement disclose for each cumulative contribution of \$100 or more (including loans) - the name, address, occupation, and employer of the contributor, and the date and amount of the contribution. Each campaign statement must also disclose for each expenditure of \$100 or more - the name and address of the payee, the amount of the payment, and a brief description of the consideration for which the payment was made. In addition, when a committee's agent or independent contractor makes a payment of \$500 or more on behalf of the committee, that information regarding those expenditures must also be disclosed. Such payments are commonly referred to as "subvendor payments." Enforcement proposes adding these violations to the streamlined program so that persons who timely file campaign statements and attempt to disclose information to the public are not treated more harshly than those who do not file campaign statements timely at all.

The failure to timely report contributions received, and expenditures made, qualifies for the streamlined program if:

- a. The filer amended the statement or report to include all required information regarding contributions received and expenditures made prior to the Stipulation being presented to the Commission;
- b. The filer has not received a penalty from the Commission in the past five years for failing to timely file a campaign statement or report or failing to timely report a contribution received or expenditure made,
- c. The total amount unreported was less than \$25,000, or 20% of the total contributions or expenditures for the committee for the relevant election, whichever is greater, and;
- d. There is no evidence of intent to conceal.

Enforcement has discretion to include or exclude any case from the program based upon mitigating and aggravating circumstances. Aggravating circumstances include: prior non-filing history, prior Enforcement prosecutions, majority or large amount of contributions or expenditures not disclosed prior to the relevant election, or accompanying violations. Mitigating circumstances include: filer is no longer in office or never obtained office, the committee had less than \$1,000 of activity unreported, all information was filed before the election but on another report or statement, the committee is a candidate for administrative termination, or filer was ill or other extenuating circumstances.

If the case qualifies for the streamlined program, Enforcement offers the filer a streamlined stipulation (see Exhibit 4) with a penalty based on the following tiered structure:

Tier	Penalty⁷ per incomplete stmt. or report filed
1 – Compliance in response to first Enforcement contact.	\$200, plus 1% of all unreported contributions received and expenditures made.
2 – Compliance prior to issuance of probable cause report.	\$400, plus 1% of all unreported contributions received and expenditures made.
3 – Compliance prior to issuance of an accusation.	\$800, plus 1% of all unreported contributions received and expenditures made.
4 – Compliance prior to adoption of a default decision.	\$1,000, plus 1% of all unreported contributions received and expenditures made.

5. Lobbyist/Lobbying Firm/Lobbyist Employer/Lobbying Coalition/\$5,000-Filer Report Non-Filer

Lobbyists, lobbying firms, lobbyist employers, and lobbying coalitions are required to file quarterly reports, regardless of the level of activity, during each two-year session in which they register to lobby. Lobbyists provide their reports to their firm or employer, then the firm or employer files their own report, attaching each lobbyist's report. \$5,000 filers are persons who do not employ a lobbyist or contract with a lobbying firm but who make payments to influence legislative or administrative action aggregating \$5,000 or more in a calendar quarter. They file only for each calendar quarter in which the person spends \$5,000.

The failure to timely file a lobbyist, lobbying firm, lobbyist employer, lobbyist coalition, or \$5,000 filer report qualifies for the streamlined program if:

- a. The filer filed the report and disclosed all reportable activity prior to the Stipulation being presented to the Commission;
- b. The filer has not received a penalty from the Commission in the past five years for failing to timely file a lobbyist, lobbying firm, lobbyist employer, lobbying coalition, or \$5,000 filer report;
- c. The total amount not timely reported is less than \$25,000 per quarter; and
- d. There is no evidence of intent to conceal.

Enforcement has discretion to include or exclude any case from the program based upon mitigating and aggravating circumstances. Aggravating circumstances include: prior non-filing history, prior Enforcement prosecutions, number of reports not timely filed, majority or large amount of activity not disclosed in connection with legislative or administrative actions actively lobbied during the period, or accompanying violations. Mitigating circumstances include: filer is unsophisticated or newly registered, the lobbyist provided the statement to the employer or firm who did not file their statement, the activity for the period was \$0, or filer was ill or other extenuating circumstances.

⁷ No streamlined program penalty will exceed the statutory limit of \$5,000 per violation (Section 83116).

If the case qualifies for the streamlined program, Enforcement offers the filer a streamlined stipulation (see Exhibit 5) with a penalty based on the following tiered structure:

Tier	Penalty⁸ per report not timely filed
1 – Compliance in response to first contact by Enforcement.	\$200, plus 1% of all payments received or payments made for lobbying activity, whichever is greater.
2 – Compliance prior to issuance of probable cause report.	\$400, plus 1% of all payments received or payments made for lobbying activity, whichever is greater.
3 – Compliance prior to issuance of an accusation.	\$800, plus 1% of all payments received or payments made for lobbying activity, whichever is greater.
4 – Compliance prior to adoption of a default decision.	\$1,000, plus 1% of all payments received or payments made for lobbying activity, whichever is greater.

6. Failing to timely pay the recipient committee \$50 annual fee.

At the beginning of 2013, a new fee was instituted in Section 84101.5 of the Act. All recipient committees in existence as of January 1, 2013, are required to pay a \$50 fee annually until they terminate as a committee. If the fee is not paid, the Secretary of State’s office will impose a \$150 penalty in addition to the \$50 fee. If the committee fails to pay the fee and penalty, a referral is made to Enforcement for collection of the fee, a \$150 penalty, and, if applicable, any penalty imposed for violating the Act. Enforcement has received our first referral from the Secretary of State’s office to prosecute the committees who have failed to pay, and we are proposing the Enforcement penalties be applied through a streamlined program.

The failure to timely pay the \$50 annual fee qualifies for the streamlined program if:

- a. The filer paid the fee and penalty prior to the Stipulation being presented to the Commission;
- b. The filer has not received a penalty from the Commission for failing to pay the \$50 annual fee within the past five years.

Enforcement has discretion to exclude any case from the program based upon mitigating and aggravating circumstances. Aggravating circumstances include: prior Enforcement prosecutions or accompanying violations. Mitigating circumstances include: filer is no longer in office or never obtained office, the committee had less than \$1,000 of activity unreported, the committee is a candidate for administrative termination or has terminated, or filer was ill or other extenuating circumstances.

⁸ No streamlined program penalty will exceed the statutory limit of \$5,000 per violation (Section 83116).

If the case qualifies for the streamlined program, Enforcement offers the filer a streamlined stipulation (see Exhibit 6) with a penalty based on the following tiered structure:

Tier	Penalty per \$50 Annual Fee not paid
1 – Compliance in response to first Enforcement contact.	\$200
2 – Compliance prior to issuance of a probable cause report.	\$400
3 – Compliance prior to issuance of an accusation.	\$600 – \$800
4 – Compliance prior to adoption of a default decision.	\$800 – \$1,000

CONCLUSION

Enforcement requests that the Commission approve the six aforementioned streamlined programs, including each program’s guidelines, penalty-structure, and attached stipulation template.

Attachments:

- Exhibit 1: SEI Non-Filer Streamlined Stipulation Template
- Exhibit 2: SEI Non-Reporter Streamlined Stipulation Template
- Exhibit 3: Campaign Statement/Report Non-Filer Streamlined Stipulation Template
- Exhibit 4: Campaign Statement/Report Non-Reporter Streamlined Stipulation Template
- Exhibit 5: Lobbyist/Lobbying Firm/Lobbyist Employer/Lobbying Coalition/\$5,000-Filer Non-Filer Streamlined Stipulation Template
- Exhibit 6: \$50 Annual Fee Violation Streamlined Stipulation Template