



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Miadich, Commissioners Baker, Ortiz, Wilson, and Wood

From: Galena West, Executive Director
Christopher B. Burton, Assistant Chief Counsel, Enforcement

Subject: Adoption of Proposed Amendments to the Commission’s Warning Letter, PREP and Streamline Programs (Regulations 18360.1, 18360.2 and 18360.3)

Date: March 8, 2024

Executive Summary

Staff presents for adoption amendments to the Fair Political Practices Commission’s (“Commission”) Streamline and Warning Letter Regulations. As proposed, Regulations 18360.1, 18360.2, and 18360.3 will expand and adjust the Commission’s Streamline Settlement and Warning Letter Programs and include criteria for the Political Reform Education Program (“PREP”). The Commission requested that staff review the current rules and determine if improvement is needed to include more low-level violations of the Political Reform Act (the “Act”) into the existing Streamline and PREP programs. Respondents would be diverted to PREP if they have little or no experience with the section of this title violated, underlying violations resulted in minimal or no public harm, and there was no evidence of an intent to violate the Act or to conceal a violation of the Act. More broadly, the Commission has expressed its policy preferences that enforcement resources be primarily directed towards the most serious and complex violations of the Act while lower-level violations are handled through the Streamline and Warning Letter Programs. As a result, staff is presenting three new categories of violations to be included in the Streamline Program. These are minor contribution limit violations (capped at \$1,000 over the applicable limit), Section 84308 violations, and recurring contributions violations. Additionally, the Commission has directed staff to process certain types of low-level violations via participation in educational programs designed to improve compliance in the future.

Violations will still be excluded from all programs if there is evidence of:

- (i) Intent to violate or conceal a violation of the Act or regulations.
- (ii) False or altered evidence presented.
- (iii) Making false statements regarding material facts.
- (iv) Intentional interference with a witness.
- (v) Public harm in the aggregate that is more than minimal.
- (vi) Other violations under review for prosecution that do not qualify for a streamline penalty.

The changes proposed by staff are intended to further these policy preferences expressed by the Commission.

Reason for Proposed Actions

As stated above, the Commission requested staff review the current regulations and determine if improvement is needed to reach the stated goal of including what the Commission has deemed low-level offenders of the Act in the faster Streamline Program in lieu of spending large amounts of resources writing, negotiating, and presenting mainline stipulations for those cases. In addition, staff has taken the opportunity to make the Streamline Program less ambiguous for easier and faster application and to add the criteria for qualification into PREP, which has been in existence for over a year and recently was codified by the passage of SB 29 (Glazer).

Staff held an Interested Persons' meeting on December 14, 2023, to discuss the proposed regulations with the public. The comment received was positive as to the changes with an emphasis on clarity in the regulations for easy application. An additional comment requested clarity on whether Assembly campaigns would be included in the "state" or "city and county" categories proposed.

Background

The Commission's Streamline Program was established in May 2015 for the Enforcement Division's prosecution of violations with limited public harm and to allow staff to focus time and resources on more egregious and intentional violations. Since the adoption of the Streamline Program, a large percentage of cases before the Commission were resolved through that program. In January 2019, the Commission expanded the existing Streamline Program to include additional violations.¹ At that time, the Commission also delegated the approval authority of these actions to the Chief of Enforcement. Instead of appearing on the Commission's monthly consent calendar for approval by the Commission, Streamline stipulations are published on the Commission's agenda to allow for public comment as was suggested by the members of the Enforcement Task Force held in 2018. The Commission expressed an interest in reviewing the Streamline Program in one year to determine the success of the added violation categories.

At the January 2021 Commission meeting, the Commission was presented with proposed changes after a review of the Streamline Program's outcomes. At that time, two more categories of violations were added² and the Tier Two Streamline option was added for violations that did not qualify for the first tier but would benefit from an expedited path to resolution.

Proposed Regulatory Actions

After a review of Enforcement Warning Letters, Streamline settlements, Mainline settlements, and actions that are either unresolved or defaulted, staff recommended at the November Prenotice Meeting proposed changes including:

¹ These violations were: Unreported Lobbying Activity • Cash Contributions or Expenditures of \$100 or more • Campaign Bank Account • Committee Naming • Advertising and Mass Mailing Disclosures • Recordkeeping • Gift Limit • Slate Mailer Organization Filing Issues • Proper Recusal of a Conflict of Interest • Major Donor Notification.

² These violations were: Major Donor Filers * Behested Payment Reports.

1. Reformatted all three regulations. The reformatting allows the criteria for each violation type to be fully contained within one regulation – Warning Letter, PREP, Tier One, and Tier Two.
2. Rewrote the population thresholds to include more smaller committees with campaign reporting and filing violations. The proposed changes would be more inclusive of the smaller populations while maintaining approximately the same caps for larger jurisdictions.
3. Added when a respondent qualifies for PREP. We anticipate having a PREP course for almost all violations within the Streamline Program, so we have integrated how someone would qualify for PREP into each violation type.³ As each new PREP course is finalized by staff, the criteria will already be approved by the Commission, making roll-out easier.
4. Removed rigid settlement amounts corresponding to a certain time in the process. Currently, the penalty amount in streamline is calculated by when you settle - Enforcement Division’s first contact with the filer, prior to issuance of a probable cause report, prior to issuance of an accusation, and prior to adoption of a default decision and order by the Commission – which are not flexible if circumstances prevented the person from settling, the staff issued the Probable Cause report to toll the statute of limitations, or any other scenario. Staff is proposing four factors instead. The base penalties vary by:
 - a. The extent and gravity of the public harm caused by the specific violation,
 - b. The level of experience of the respondent(s) with the requirements of the Political Reform Act,
 - c. The level of diligence to come into compliance, and
 - d. The level of cooperation during investigation and in reaching settlement.
5. Inclusion of three new categories of violations. Staff identified three categories that could be efficiently and effectively handled through the Commission’s Streamline Program. These three categories are minor contribution limit violations (capped at \$1,000 over the applicable limit), Section 84308 violations, and recurring contributions violations.

In addition, since the Prenotice meeting, staff has rewritten the criteria for Section 84308 to clearly include violations by the officer, participant and party. For instance, officers must refund the amount greater than \$250 back to the source of the contribution to enter into an agreement with the Enforcement Division. In addition, violations included in PREP and Tier One include an untimely disclosure was made prior to a decision being rendered in the proceeding and 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.”

In response to the comments at the Interested Persons’ meeting, format changes have made more categories “inclusion” categories and less “exclusion” categories for easier application. In addition, clarification has been added regarding who falls into the city and county

³ The four violations included in the regulations that we do not anticipate having a PREP course available for would be Slate Mailer Organization violations, Recurring Contributions, Proper Recusal for a Conflict-of-Interest violations and Major Donor \$5,000 Notifications violations.

committee category versus the state committee category. “City and county 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 “state 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.

Also, in response to comments from the Commission, staff reviewed the language in the penalty regulation (Regulation 18360.3) regarding cooperation from respondents and how that will be considered when assessing a penalty. The previous language states: “The base penalties below can vary in \$100 increments based on the extent and gravity of the public harm caused by the specific violation, the level of experience of the respondent(s) with the requirements of the Political Reform Act, the level of diligence to come into compliance, and the level of cooperation to reach a settlement.” Staff is proposing adding “level of cooperation *during investigation and* in reaching settlement” to clarify that the consideration includes active participation during the enforcement process.

Conclusion

Staff recommends repeal and adoption of the Commission’s Warning Letter, PREP and Streamline regulations.

Attachments:

Proposed Repeal and Adopt Regulation 18360.1

Proposed Repeal and Adopt Regulation 18360.2

Proposed Repeal and Adopt Regulation 18360.3