

1 Adopt 2 Cal. Code Regs., Section 18360.1 to read:

2 **§ 18360.1. Streamline Case Factors.**

3 The Commission may include or exclude any filer from receiving a streamline penalty
4 based upon mitigating or aggravating circumstances. Mitigating circumstances result in
5 consideration of a Warning Letter being issued instead of a Streamline Penalty. Aggravating
6 circumstances result in the consideration of a Mainline Stipulation instead of a Streamline
7 Penalty. A Mainline Stipulation generally results in a higher penalty and includes a full
8 description of the violation and surrounding events.

9 (a) Types of Violations Eligible.

10 (1) Late Statements and Reports, including Campaign, Statements of Economic Interests,
11 and Lobbying.

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

13 (3) Unreported Contributions or Expenditures.

14 (4) Cash Contributions or Expenditures.

15 (5) Campaign Bank Account.

16 (6) Committee Naming.

17 (7) Advertising and Mass Mailing Disclosures.

18 (8) Recordkeeping.

19 (9) Gift Limit.

20 (10) Slate Mailer Organization Filing Issues.

21 (11) Proper Recusal of a Conflict of Interest.

22 (12) Major Donor Notifications.

1 (b) Penalty Amount. The streamline penalty for each violation is found in Regulation
2 18360.2.

3 (c) General Requirements for Eligibility, Considerations, Factors, and Automatic
4 Exclusions.

5 (1) Eligibility Requirements.

6 (A) Sign and submit to the Commission a streamline stipulation, decision, and order on a
7 form provided by the Commission, and

8 (B) Pay a proposed penalty by cashier's check, electronic payment, or money order in an
9 amount as determined in Regulation 18360.2.

10 (2) Considerations and Factors.

11 (A) Mitigating Circumstances include:

12 (i) Low level of experience and sophistication of the party.

13 (ii) Self-reported violations before public discovery.

14 (iii) Violations resulted in minimal public harm.

15 (iv) Low amount raised and spent regarding the election.

16 (v) Unsuccessful.

17 (vi) Filer or candidate leaving office or never having obtained office.

18 (vii) Illness, incapacitation, death, or otherwise unable to perform duties.

19 (viii) Low activity during the missing or late reporting period.

20 (ix) Small percentage of overall activity for reporting period.

21 (x) Committee has terminated.

22 (xi) Fraudulent activity of other caused the violation.

23 (xii) Activity was reported by other participant in the transaction.

1 (xiii) Activity was reported on another campaign statement of the filer.

2 (xiv) For late statements and reports, activity was unrelated to election that triggered
3 filing requirements.

4 (B) Automatic Exclusions because of Aggravating Circumstances include:

5 (i) Intent to conceal or violate the Political Reform Act or regulations relating to the Act.

6 (ii) Presented the FPPC false or altered evidence.

7 (iii) Made false statements to the FPPC regarding material facts.

8 (iv) Intentional interference with a witness in the FPPC matter.

9 (v) Prior penalty paid to the Commission for the same type of violation occurring within
10 the last five years.

11 (vi) For late statements and reports, history of not timely filing statements or reports as
12 part of a pattern.

13 (vii) Violations caused in the aggregate more than minimal public harm

14 (viii) Has other violations under review for prosecution that do not qualify for a
15 streamline penalty.

16 (d) Specific Requirements for Eligibility.

17 (1) Late Statements and Reports. To enter into a streamline settlement, an individual who
18 failed to timely file a campaign statement, lobbying report, or statement of economic interests
19 must file the late statement or report with the appropriate agency unless the relevant information
20 was reported by the person elsewhere or the FPPC determines that the information has been
21 sufficiently disclosed in the stipulation and/or other filings.

22 (A) Statement of Economic Interests

23 (i) Considerations and Factors

1 a. Mitigating Circumstances include:

2 1. Only Statement of Economic Interests missing is the Leaving Office Statement.

3 2. Only Statement of Economic Interests missing is the Leaving Office Statement and the
4 Annual Statement that was due within three months of the date they left office.

5 b. Automatic Exclusions because of Aggravating Circumstances include:

6 1. For SEI reporting violations, also had a conflict of interest violation under Government
7 Code Sections 1090 or 87100 involving the undisclosed economic interest.

8 (B) Campaign Statement or Report.

9 (i) Considerations and Factors

10 a. Mitigating Circumstances include:

11 1. The committee had less than \$2,000 of activity for the statement period.

12 2. The committee filed an electronic (or paper) statement timely for the same period.

13 3. The committee meets the requirements for administrative termination.

14 4. No history of not timely filing campaign statements or reports.

15 5. The statement or report was not due prio to a relevant election.

16 b. Automatic Exclusions because of Aggravating Circumstances include:

17 1. The campaign statement or report at issue was required to report greater than \$50,000
18 in contributions received or \$50,000 in expenditures made.

19 2. The number of statements or reports not timely filed as part of a pattern.

20 (C) Lobbying Reports Required under Chapter 6 of the Political Reform Act.

21 (i) Considerations and Factors.

22 a. Mitigating Circumstances include:

23 1. They are a placement agent not active in the state.

1 2. The lobbyist provided a report to the employer or firm who did not file the report.

2 3. The activity for the period was less than \$5,000.

3 4. No history of not timely filing reports as part of a pattern.

4 5. The filer was ill or other extenuating circumstances.

5 b. Automatic Exclusions because of Aggravating Circumstances include:

6 1. The total amount of payments for lobbying during the reporting period is greater than
7 \$50,000.

8 2. The person tried to conceal lobbying activity.

9 3. An individual lobbied without registering.

10 4. The number of reports not timely filed.

11 5. There was a majority or large amount of activity not disclosed in connection with
12 legislative or administrative actions actively lobbied during the period.

13 6. The undisclosed activity included contributions.

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

15 a. Eligibility Requirements. File an amended statement of economic interests with the
16 appropriate agency disclosing the previously undisclosed economic interest.

17 b. Considerations and Factors.

18 1. Mitigating Circumstances include:

19 A. Information regarding the economic interest was reported elsewhere on the statement.

20 B. The aggregate value of the gift(s) or income received from the economic interest was
21 minimal (i.e., less than \$500).

22 C. The filer has not performed the duties of the office/position for a significant period of
23 time due to illness or otherwise.

1 2. Automatic Exclusions because of Aggravating Circumstances include:

2 A. The undisclosed gift(s) or income received from a source that was regulated by or had
3 business before the filer's agency.

4 B. The undisclosed gifts or income caused a conflict of interest.

5 (iii) Unreported Contribution(s)/Expenditure(s)/Lobbying Activity.

6 a. Eligibility Requirements. File an amended campaign statement or report that includes
7 all required information regarding contributions received and expenditures made.

8 b. Considerations and Factors.

9 1. Mitigating Circumstances include:

10 A. The committee had less than \$1,000 of activity not reported.

11 B. The activity was reported prior to any relevant election on a different statement or
12 report.

13 C. The committee meets the requirements for administrative termination.

14 D. The late reporting was due to illness or incapacity of the individual responsible for the
15 filing.

16 2. Automatic Exclusions because of Aggravating Circumstances include:

17 A. Campaign Reporting: The total amount unreported was more than 25% of the total
18 contributions or expenditures for the committee for the reporting period.

19 B. Lobbying Reporting: The total amount of activity unreported was more than 25% of
20 the total required to be reported for that reporting period.

21 C. A history of campaign reporting violations.

1 (iv) Cash Contribution(s) or Expenditure(s) of \$100 or More. Includes cashier's checks or
2 similar instruments not drawn on the contributor's account and does not include the name of the
3 contributor on its face.

4 a. Eligibility Requirements. Refund to the State of California General Fund if the source
5 of a contribution cannot be determined. Disclose the source of the contribution(s) or recipient(s)
6 of the expenditure(s) on the appropriate campaign statement(s) or report(s).

7 b. Considerations and Factors.

8 1. Mitigating Circumstances include:

9 A. The amount received or spent is less than \$500.

10 2. Automatic Exclusions because of Aggravating Circumstances include:

11 A. Failure to timely disclose the cash contribution(s) or expenditure(s) on campaign
12 statement(s) or report(s).

13 B. The percentage of cash contributions and expenditures of \$100 or more exceeds 25%
14 of total campaign contributions and expenditures for that reporting period or exceeds \$10,000 in
15 total.

16 C. The person made personal use of campaign funds.

17 D. The campaign records were insufficient to determine if use of cash concealed other
18 violations.

19 (v) Campaign Bank Account.

20 a. Eligibility Requirements. Disclose the contribution(s) or expenditure(s) on the
21 appropriate campaign statement(s) or report(s).

22 b. Considerations and Factors.

23 1. Mitigating Circumstances include:

1 A. Disclosure of the contribution(s) or expenditure(s) was reported timely on the correct
2 campaign statement or report.

3 B. The candidate or his or her wholly owned business is the source of 50% or more of the
4 committee funds for the election.

5 C. Reimbursement, if any, occurred within the time periods prescribed by the Act and
6 regulations.

7 D. The activity was isolated to the beginning of the campaign.

8 2. Automatic Exclusions because of Aggravating Circumstances include:

9 A. The total amount of all contributions not deposited in a campaign bank account during
10 the statement period exceeds 10% of the total contributions received for that period or exceeds
11 \$10,000 in total.

12 B. The total amount of all campaign expenditures not from the campaign bank account
13 during the statement period exceeds 10% of the total amount of all campaign expenditures for
14 that period or exceeds \$10,000 in total.

15 C. The person made personal use of campaign funds.

16 D. The campaign records were insufficient to determine if use of another account
17 concealed other violations.

18 (vi) Committee Naming.

19 a. Eligibility Requirements. Committee name is amended.

20 b. Consideration and Factors

21 1. Mitigating Circumstances include:

22 A. Names included essentially all required elements and was not misleading.

23 2. Automatic Exclusions because of Aggravating Circumstances include:

1 A. Name was misleading or ambiguous.

2 B. Incorrect name caused advertisements to be incorrect.

3 C. Incorrect name concealed major funder, major donor, or sponsor.

4 D. The committee had activity over \$10,000 for the reporting period during which the
5 committee name was incorrect.

6 (vii) Advertising and Mass Mailing Disclosures.

7 a. Eligibility Requirements. Correction of the advertisement or mass mailing, if feasible,
8 was done.

9 b. Considerations and Factors.

10 1. Automatic Exclusions because of Aggravating Circumstances include:

11 A. The violation is likely to result in confusion regarding the identity of the candidate or
12 committee responsible for the advertisement, or a top contributor, sponsor, controlling candidate,
13 or ballot measure supported or opposed.

14 B. The advertisement or mass mailing contains more than two missing or incorrect
15 disclosures or display requirements in the disclaimer and one or more of the missing or incorrect
16 disclosures is: (1) paid for by requirement, (2) top contributor information, or (3) the statement
17 that the advertisement was not authorized by a candidate or committee controlled by a candidate.

18 2. Examples of minor violations that may qualify for a streamline penalty include the
19 following:

20 A. Failure to include “paid for by” in the same manner and immediately adjacent to a
21 committee name;

22 B. Disclosures in a font type, color, position, or size that does not comply with a
23 requirement but is legible.

1 C. Disclosures that include a committee name that does not match the name as stated in
2 the statement of organization but clearly identifies the source of the advertisement;

3 D. Failure to include a street address but other identifying information, such as a website
4 address, is included;

5 E. Failure to list top contributors in proper order but they are all included;

6 F. Required size or time length of disclosure is not correct, but the disclaimer is still
7 identifiable, and all the other disclosure is correct;

8 G. Failure to use the precise disclaimer language but all other disclosure is correct.

9 (viii) Recordkeeping (as required by Government Code Section 84104 and Regulation
10 18401).

11 a. Considerations and Factors.

12 1. Mitigating Circumstances include:

13 A. The missing records did not rise to the level to be considered a material violation.

14 2. Automatic Exclusions because of Aggravating Circumstances include:

15 A. The lack of recordkeeping inhibited audit efforts.

16 B. The lack of recordkeeping made it impracticable to determine if a person substantially
17 complied with the Act's campaign reporting requirements.

18 C. The lack of recordkeeping may have blocked discovery of other violations.

19 (ix) Gift limit (contained within Sections 86203 or 89503).

20 a. Eligibility. If the person has received a gift over the limits, return the gift or reimburse
21 the giver for the difference between the gift's fair market value and the applicable gift limit.

22 b. Considerations and Factors.

23 1. Mitigating Circumstances include:

1 A. No evidence that governmental decisions were made or effected regarding the gift
2 giver by the recipient.

3 B. Exclude if the gift giver is a named party in, or the subject of, a governmental decision
4 before the gift recipient or the gift recipient's agency.

5 2. Automatic Exclusions because Aggravating Circumstances include:

6 A. The gift giver is a named party in, or the subject of, a governmental decision before
7 the gift recipient or the gift recipient's agency.

8 B. The gift giver is the subject of a proceeding if the decision involves the issuance,
9 renewal, approval, denial, or revocation of any license, permit, or other entitlement to, or
10 contract with the gift giver.

11 C. Failure to report the gift on a Statement of Economic Interests, if required.

12 D. The fair market value of the gift is more than \$200 over the gift limit.

13 (x) Slate Mailer Organization Campaign Filings. Slate Mailer Organizations only qualify
14 for possible participation in the Commission's Streamline Program if they have also filed timely
15 campaign statements and reports as a committee under the Act disclosing essentially all of the
16 information required to be reported by the late filed slate mailer organization campaign
17 statements and reports.

18 (xi) Proper Recusal of a Conflict of Interest. A person qualifies possible participation in
19 the Commission's Streamline Program if they have identified that they may have a prohibited
20 conflict of interest regarding the governmental decision before them and have recused
21 themselves but failed to either:

1 a. Publicly identify the financial interest that gives rise to the conflict of interest or
2 potential conflict of interest in detail sufficient to be understood by the public as detailed in
3 Regulation 18707, subdivision (a), or

4 b. Properly leave the room until after the discussion, vote, and any other disposition of
5 the matter is concluded.

6 (xii) Major Donor Notification. A person qualifies for possible participation in the
7 Commission’s Streamline Program if they failed to send out major donor notifications required
8 under Section 84105 timely.

9 a. Considerations and Factors.

10 1. Mitigating Circumstances include:

11 A. The committee has been in existence less than one year.

12 B. The committee has never been required to send out the Section 84105 notifications
13 before.

14 C. All persons who would have received the notifications timely filed as Major Donors, if
15 required.

16 Note: Authority cited: Section 83112, Government Code. Reference: Sections 1090, 84104,
17 87100, 84104, Government Code.