



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:** Prenotice Discussion of Proposed Amendments to the Commission’s Warning Letter, PREP and Streamline Programs (Regulations 18360.1. 18360.2 and 18360.3)

**Date:** November 6, 2023

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### Executive Summary

Staff presents for discussion 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 this title or to conceal a violation of this title. 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 of the Act 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. The proposed amendments will be presented again for adoption in January.

## **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).

## **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.<sup>1</sup> 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 added<sup>2</sup> 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 recommends the following changes:

1. Reformatted all three regulations. In 2021, when the Commission added the Tier Two Streamline option, it was added as a third regulation making Regulation 18360.1 (Tier One), Regulation 18360.2 (Penalties) and Regulation 18360.3 (Tier Two). You would need look at all three regulations to determine which type of resolution and penalty would apply.

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<sup>1</sup> 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.

<sup>2</sup> These violations were: Major Donor Filers \* Behested Payment Reports.

The reformatting allows the criteria for each violation type to be fully contained within one regulation – Warning Letter, PREP, Tier One, and Tier Two. For instance, if you filed a campaign statement late, you would look at Regulation 18360.1. Under the section entitled, “Late Campaign Statements and Reports,” you would find the specific eligibility criteria for each resolution type. Lastly, if necessary, you look to Regulation 18360.3 to determine your penalty amount.

If you have an ethics violation, like a gift limit violation, you look to Regulation 18360.2 under the section entitled “Gift Limit” to see the criteria for Warning Letter, PREP, and the two Streamline Programs. Again, any penalty would be in Regulation 18360.3. This should make the regulations easier to apply by staff and the public.

2. Rewrote the population thresholds to include more smaller committees with campaign reporting and filing violations. For all committees, current participation in the Tier One Streamline Program is limited based on the population of the jurisdiction of the committee with the bottom threshold being \$16,700 for populations under 390,625. The proposed changes would be more inclusive of the smaller populations while maintaining about the same caps for larger jurisdictions. This was accomplished by separating the thresholds of activity by city and county committees in jurisdictions with a population of one million people or less from state committees and city and county committees in jurisdictions with a population of over one million. This would include the top ten counties based on population into the “state” category and everyone else into the “city and county” category.<sup>3</sup>
3. Deleted the exclusion criteria “Pattern of campaign statements or reports not timely filed.” Taken literally, even two can be a pattern causing this criterion to exclude many committees and filers unintentionally. Staff believes that this criterion is already included within the exclusion of a prior history of prosecution for that type of violation and the standard of exclusion if there is any evidence of intentionality so that nothing will be lost since discretion can be applied in egregious cases.
4. Expanded minimal public harm criteria with examples in campaign context to help staff understand this critical criterion. Examples of minimal public harm can include low activity during the missing or late reporting period, a low amount raised and spent for the election, and if the amount was a small percentage of overall activity.
5. 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. The only three violations included in the regulations that we do not anticipate having a PREP course available for would be Slate Mailer Organization violations, Proper Recusal for a Conflict-of-Interest violations

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<sup>3</sup> Specifically, for late campaign statements and reports the amounts would be “The campaign statement or report at issue reported contributions and expenditures totaling \$25,000 or greater for city and county committees in jurisdictions with a population of one million people or less, or \$50,000 or greater for state committees and city and county committees in jurisdictions with a population of over one million.” Regulation 18360.1, subd. (f)(1)(B)(i).

and Major Donor \$5,000 Notifications violations. As each new PREP course is finalized by staff, the criteria will already be approved by the Commission, making roll-out easier.

6. 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 to reach a settlement.
7. Removed an exclusion for when a 24-hour Report that is filed late and might have changed the advertising disclosures for top contributor(s). Staff has found this circumstance cannot happen because of the limited amount of activity that is permitted in Tier One (a limit of \$50,000, which is the amount required to qualify as a top contributor Section 84501, subd. (c)(1)). For Tier Two, this violation is properly included since barring extreme mitigation, the advertising violation would also be included as a separate violation with an increase in penalties for Tier Two violations, discussed below.
8. Included additional violations in Tier Two that would be excluded currently and to compensate for this change increased some of the Tier Two penalties. The percentage penalty has been increased to 2% of the activity for most Tier Two campaign violations. The purpose of the percentages attached to the base penalty is to account for the difference between the larger amounts and smaller amounts of activity creating a higher penalty for higher activity amounts.

Tier Two offers the Commission, staff, and the public a way to expedite more cases so that case closure rates can rise, and resolutions can be achieved sooner for violations where intentional behavior is not found. Tier Two captures cases currently bound for mainline processing where the violations are not unique or intentional, and do not result in public harm such that the Commission and the public would require a full briefing of the details. Staff believes the current program works well to capture activity with minimal public harm and the changes detailed above would help solidify that process.

9. 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.

For contribution limit violations, staff has proposed including requiring a refund the amount over the contribution limit or unlawfully obtained contribution(s) for all levels of

prosecution and for Tier One contributions including contributions of an amount not more than \$500 over the applicable limit and outside the 90-day period preceding the relevant election and for Tier Two including contributions of an amount not more than \$1,000.

For Section 84308 violations, Tier One would include disclosure issues like when an officer did not know or have reason to know that the participant had a financial interest in the decision and received a contribution within the preceding 12 months of more than \$250 from a party or a participant but did not disclose that fact on the record of the proceeding but has since disclosed the fact in the agency's official records. And a party to a proceeding before an agency disclosed within 60 days on the record of a proceeding or in the agency's official records, any contribution in an amount of more than \$250 made within the preceding 12 months by the party or the party's agent to an officer with the agency and that proceeding was not before that officer.

For recurring contribution violations, Tier One would include violations like the initial solicitation did not require affirmative consent but the later solicitations did, the majority of communications did not provide all necessary information to cancel the recurring contribution, and the contributor requested to cancel a recurring contribution and the contribution was not returned within 14 days but before 60 days.

### **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**