

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18360.1. Eligibility Requirements and Considerations for Campaign Violations -- Streamline (Tiers One and Two), Warning Letters and the Political Reform Education Program (PREP).

(a) If eligible, filers may voluntarily resolve violations of the Political Reform Act (the “Act”) by accepting a Warning Letter, completing the Political Reform Education Program (“PREP”), paying a Tier One Streamline penalty, paying a Tier Two Streamline penalty, or paying a Mainline penalty. The Chief of Enforcement will determine the appropriate form and amount of penalty to offer in settlement for a violation depending on the circumstances.

Mitigating circumstances result in consideration of issuance of a Warning Letter or participation in PREP instead of a Streamline penalty. Aggravating circumstances result in the consideration of either a Tier Two Streamline penalty or a Mainline penalty. A Mainline penalty is generally higher, and the stipulation includes a full description of the violation and surrounding events.

(b) Types of Violations Eligible for consideration of a Warning Letter, PREP, or a Streamline penalty.

- (1) Late Campaign Statements and Reports.
- (2) Unreported Contributions and Expenditures.
- (3) Cash Contribution(s) or Expenditure(s) of \$100 or More.
- (4) Campaign Bank Account.
- (5) Committee Naming.
- (6) Advertising and Mass Mailing Disclosures.
- (7) Slate Mailer Organization Filing Issues.

(8) Recordkeeping.

(9) Major Donor Notifications.

(10) Late Campaign Statements and Reports (Major Donor Filers).

(11) Contribution Limits.

(12) Section 84308.

(13) Recurring Contributions.

(c) Penalty Amount. Penalties are not issued for a Warning Letter or completion of PREP. The Streamline penalty for each violation is found in Regulation 18360.3.

(d) General Requirements for Eligibility, Considerations, and Exclusions.

(1) “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.

(2) General Eligibility Considerations for Issuance of a Warning Letter:

(A) Low level of experience and sophistication of the party.

(B) Lack of experience or knowledge of the Act's requirements caused multiple violations with minimal public harm that were corrected upon contact.

(C) Self-reported violations before public discovery.

(D) Violations resulted in minimal public harm, including low activity during the missing or late reporting period, low amount raised and spent for the election, and amount was a small percentage of overall activity.

(E) Committee has terminated.

- (F) Unsuccessful or never obtained the office.
- (G) Illness, incapacitation, death, or otherwise unable to perform duties.
- (H) Fraudulent activity of another caused the violation.
- (I) Activity was reported by other participant in the transaction.
- (J) Activity was reported timely on another campaign statement or report of the filer.
- (K) The same candidate, committee, or principal officer has not been issued a Warning

Letter for the same type of violation occurring within the last five years.

(3) General Eligibility Requirements for PREP:

- (A) Respondent meets all the requirements listed in the PREP agreement.
- (B) Respondents have not participated in PREP or been ordered to pay a penalty for the

same type of violation occurring within the last five years.

- (C) Respondent has little or no experience with the section of this title that they violated.

(4) General Eligibility Requirements for both Streamline Programs:

(A) Sign and submit to the Commission a Streamline Stipulation, decision, and order on a form provided by the Commission,

(B) Pay a proposed penalty by cashier's check, electronic payment, or money order in an amount as determined in Regulation 18360.3, and

(C) The same candidate, committee, or principal officer has not paid a prior penalty to the FPPC for the same type of violation in the same tier occurring within the last five years.

(5) Exclusions from a Warning Letter, PREP and both Streamline Programs:

(A) Any evidence of an intent to conceal or deliberately violate the Act or regulations relating to the Act.

(B) Presented the FPPC false or altered evidence or made false statements to the FPPC regarding material facts.

(C) Evidence of intentional interference with a witness in the FPPC matter.

(D) The extent and gravity of the public harm is more than minimal.

(E) Has other violations under review for prosecution that are not eligible for Warning Letter, PREP, or a Streamline penalty.

(e) Specific Requirements for Eligibility.

(1) Late Campaign Statements and Reports. Respondents who failed to timely file a campaign statement or report must file the late statement or report with the appropriate agency unless the relevant information was reported by the person elsewhere or the FPPC determines that the information has been sufficiently disclosed in the stipulation and/or other filings.

(A) Considerations for a Warning Letter include:

(i) Activity was unrelated to the election that triggered filing requirements.

(ii) The late statement or report was filed more than three days prior to the relevant election.

(iii) The candidate or candidate's wholly owned business was the source of 75% or more of the funds disclosed on the late statement or report.

(iv) The statement or report was filed in the wrong jurisdiction.

(v) The committee raised or spent not more than \$10,000 for the election.

(vi) Contributions and expenditures on the late statement or report totaled not more than \$5,000 for city and county committees or not more than \$10,000 for state committees.

(B) Violations eligible for possible inclusion in PREP and Tier One Streamline:

(i) Failure to timely file a statement excluding 24 Hour Reports as defined in Section 82013(a) and (b) where the filing at issue reported contributions and expenditures totaling \$25,000 or less for city and county committees, or \$50,000 or less for state committees.

(ii) Failure to timely file a 24-Hour Report by a committee as defined in Section 82013(a) and (b) where the committee disclosed the contribution(s) or expenditure(s) on another statement or report filed by the committee before the election.

(iii) Failure to timely file a 24-Hour Report required to be filed by a committee as defined in Section 82013(a) and (b) before the election where another committee disclosed the contribution(s) or expenditure(s) on a timely-filed statement or report earlier than the last 16 days before the election, and the total amount the committee failed to timely report was \$25,000 or less for city and county committees, or \$50,000 or less for state committees.

(iv) Failure to timely file a 24-Hour Report required to be filed by a committee as defined in Section 82013(a) and (b) during the last 16 days before the election and was not filed before the election but the amount required to be reported was de minimis in relation to the total campaign.

(C) Violations eligible for possible inclusion in Tier Two Streamline:

(i) Violations where the committee's activity for the reporting period at issue totaled less than \$50,000 for city and county committees, or less than \$100,000 for state committees.

(2) Unreported Contributions and Expenditures. Respondents who failed to timely complete a campaign statement or report must file the necessary amendments with the appropriate agency unless the relevant information was reported by the person elsewhere or the FPPC determines that the information has been sufficiently disclosed in the stipulation and/or other filings.

(A) Considerations for a Warning Letter include:

(i) The unreported contributions or expenditures per campaign statement or report totaled not more than \$5,000 for city and county committees or totaled not more than \$10,000 for state committees.

(ii) Activity was unrelated to the election that triggered filing requirements.

(B) Violations eligible for possible inclusion in PREP and Tier One Streamline:

(i) The unreported contributions or expenditures per campaign statement or report totaled not more than \$10,000 for city and county committees or totaled not more than \$25,000 for state committees.

(C) Violations eligible for possible inclusion in Tier Two Streamline:

(i) Violations where the committee's activity for the reporting period at issue totaled \$10,000 or more but less than \$50,000 for city and county committees, or \$25,000 or more but less than \$100,000 for state committees.

(3) Cash Contribution(s) or Expenditure(s) of \$100 or More. Cash means legal tender and cashier's checks, or similar instruments which are not drawn on the contributor's account and that does not include the name of the contributor on its face. Refund to the source of the contribution or the State of California General Fund, if the source of a contribution cannot be located or is otherwise unavailable to receive the returned contribution. Disclose the source of the contribution(s) or recipient(s) of the expenditure(s) on the appropriate campaign statement(s) or report(s).

(A) Considerations for a Warning Letter include:

(i) The total amount of cash of \$100 or more received or spent for the reporting period was not greater than \$500.

(B) Violations eligible for possible inclusion in PREP and Tier One Streamline:

(i) The majority of the cash of \$100 or more was timely disclosed on a campaign statement or report.

(i) The total amount of cash of \$100 or more for the reporting period was less than \$5,000.

(C) Violations eligible for possible inclusion in Tier Two Streamline:

(i) Committees failed to timely disclose a majority of the cash of \$100 or more on a campaign statement or report, if the total amount of cash was not more than \$10,000.

(ii) The total amount of cash for the reporting period was \$5,000 or more but was not greater than \$10,000.

(D) Exclusions from a Warning Letter, PREP and both Streamline Programs:

(i) The campaign records were insufficient to determine if use of cash concealed other violations.

(ii) The person made personal use of campaign funds.

(4) Campaign Bank Account. Disclose the contribution(s) or expenditure(s) on the appropriate campaign statement(s) or report(s).

(A) Considerations for a Warning Letter include:

(i) The contribution(s) or expenditure(s) was reported timely on the correct campaign statement or report of the committee.

(ii) The candidate or the candidate's wholly owned business was the source of 50% or more of the committee's overall contributions.

(iii) The activity was isolated to the beginning of the campaign.

(B) Violations eligible for possible inclusion in PREP and Tier One Streamline:

(i) The total amount raised and spent for the campaign was not greater than \$10,000 and the activity was reported prior to the relevant election.

(ii) The total amount raised and spent for the campaign was more than \$10,000 and the total contributions not deposited in the campaign bank account during the reporting period was less than 10% of the total contributions received for that period.

(iii) The total amount raised and spent for the campaign was more than \$10,000 and the total expenditures not made from the campaign bank account during the reporting period was less than 10% of the total expenditures made for that period.

(C) Violations eligible for possible inclusion in Tier Two Streamline:

(i) The total contributions not deposited in the campaign bank account during the reporting period was greater than 10% but was not more than 40% of the total contributions received for that period.

(ii) The total expenditures not made from the campaign bank account during the reporting period was greater than 10% but was not more than 40% of the total expenditures made for that period.

(iii) The total amount of activity not deposited into or made from the campaign bank account was greater than \$10,000 but was not more than \$25,000.

(D) Exclusions from a Warning Letter, PREP and both Streamline Programs:

(i) The campaign records were insufficient to determine if use of cash concealed other violations.

(ii) The person made personal use of campaign funds.

(5) Committee Naming. Committee name must be amended to comply with committee naming requirements.

(A) Considerations for a Warning Letter include:

(i) Name included essentially all required elements and was not misleading.

(B) Exclusions from PREP and Tier One Streamline:

(i) Name was misleading or ambiguous.

(ii) Incorrect name caused advertisements to be incorrect and when included on an advertisement, the incorrect name is likely to result in confusion regarding the identity of the committee responsible for the advertisement.

(iii) Incorrect name failed to disclose a sponsor.

(iv) The committee had activity over \$10,000 for the reporting period during which the committee's name was incorrect.

(B) Violations eligible for possible inclusion in Tier Two Streamline:

(i) The name was misleading or ambiguous.

(ii) The incorrect name caused advertisements to be incorrect, which resulted in confusion regarding the identity of the committee responsible for the advertisement.

(iii) The incorrect name failed to disclose a single sponsor.

(iv) The committee having activity over \$10,000 but not more than \$50,000 for the reporting period during which the committee's name was incorrect.

(6) Advertising and Mass Mailing Disclosures. Correction of the advertisement or mass mailing, if feasible, was done.

(A) Violations eligible for possible inclusion in PREP and Tier One Streamline:

(i) Failure to include “paid for by” or “ad paid for by” in the same manner and immediately adjacent to a committee name.

(ii) Disclosures in a font type, color, position, or size that does not comply with a requirement but was as legible as the requirement.

(iii) Disclosures that include a committee name that does not match the name as stated in the statement of organization but clearly identifies the source of the advertisement.

(iv) Failure to include a street address but other identifying information, such as a website address, was included.

(v) Inadvertent failure to list top contributors in proper order but they are all included.

(vi) Required size or duration of disclosure was not correct, but the disclaimer was identifiable, and the remainder of the disclosure was correct.

(vii) Failure to use the precise disclaimer language but the remainder of the disclosure was correct.

(B) Exclusions from PREP and Tier One Streamline:

(i) The violation was likely to result in confusion regarding the identity of the candidate or committee responsible for the advertisement.

(ii) The advertisement or mass mailing contains two or more of the following missing or incorrect disclosures: (1) the committee name requirement, (2) top contributor information (top contributor must be substantially correct), or (3) the statement that the advertisement was not authorized by a candidate or committee controlled by a candidate. Each missing or incorrect top contributor is considered a single “missing or incorrect disclosure.”

(C) Violations eligible for possible inclusion in Tier Two Streamline:

(i) The violation resulted from a lack of committee formation through ignorance of the requirements and the committee raised not more than \$25,000 and spent not more than \$25,000.

(ii) The violation was inadvertent or negligent and was disclosed on a campaign statement or report of the committee but was likely to result in confusion regarding the identity of the candidate or committee responsible for the advertisement.

(iii) The advertisement or mass mailing contains no more than three of the following missing or incorrect disclosures: (1) top contributor information (top contributor must be substantially correct), (2) the statement that the advertisement was not authorized by a candidate or committee controlled by a candidate, or (3) the committee name requirement. If there are two or more missing or incorrect top contributors, the advertisement or mass mailing does not meet the requirements of this inclusion.

(7) Slate Mailer Organization Filing Issues. Slate Mailer Organizations qualify for possible participation in Tier One Streamline if they have timely filed campaign statements and reports as a committee under the Act disclosing essentially all the information required to be reported by the late filed slate mailer organization campaign statements and reports.

(8) Recordkeeping. Violations charged by calendar year unless discretion used by Chief of Enforcement.

(A) Considerations for a Warning Letter include:

(i) The missing records do not rise to the level to be considered a material violation.

(B) Exclusions from PREP and Tier One Streamline:

(i) The lack of recordkeeping inhibited audit efforts.

(ii) The lack of recordkeeping made it impracticable to determine if the committee substantially complied with the Act's campaign reporting requirements.

(iii) The lack of recordkeeping may have inhibited discovery of other violations.

(C) Violations eligible for possible inclusion in Tier Two Streamline:

(i) The inadvertent or negligent lack of recordkeeping inhibited audit efforts.

(ii) The inadvertent or negligent lack of recordkeeping made it impracticable to determine if the committee substantially complied with the Act's campaign reporting requirements.

(iii) The inadvertent or negligent lack of recordkeeping may have inhibited discovery of other violations.

(9) Major Donor Notifications.

(A) Considerations for a Warning Letter include:

(i) The committee has been in existence not more than one year.

(ii) The committee has not previously been required to send out the major donor notification.

(iii) All persons who would have received the notifications timely filed campaign statement(s) or report(s) as a major donor committee, if required.

(B) Violations eligible for possible inclusion in Tier One Streamline:

(i) Committee failed to timely send out major donor notifications required by Section 84105.

(10) Late Campaign Statements and Reports (Major Donor Filers). Respondents who failed to timely file a campaign statement or report as a major donor committee must file the late statement or report with the appropriate agency unless the relevant information was reported by the person elsewhere or the FPPC determines that the information has been sufficiently disclosed in the stipulation and/or other filings.

(A) Considerations for a Warning Letter include:

(i) First-time major donor filer and the respondent was not sent the major donor notification as required.

(ii) Contributions for the calendar year were \$50,000 or less.

(iii) 24-Hour Report(s) was filed prior to the relevant election and disclosed the contributions.

(B) Violations eligible for possible inclusion in PREP or Tier One Streamline:

(i) Contributions for the calendar year were not greater than \$75,000.

(ii) Contributions required 24-Hour Reports to be filed within the last 16 days before the relevant election and either the donor or the recipient of the contribution filed a 24-Hour Report before the relevant election.

(C) Violations eligible for possible inclusion in Tier Two Streamline:

(i) Contributions for the calendar year were not more than \$150,000.

(ii) Contributions required 24-Hour Reports to be filed within the last 16 days before the relevant election and the recipient of the contribution did not file a 24-Hour Report before the relevant election and the contributions did not total \$100,000 or greater.

(11) Contribution Limits. Respondents who violated Sections 85301, 85302, 85303, 85316, or 85702 by making or receiving contributions over the limit or prohibition must refund the amount over the contribution limit or unlawfully obtained contribution(s) back to the source of the contribution(s) or the State of California General Fund, if the source of a contribution(s) cannot be located or is otherwise unavailable to receive the returned contribution.

(A) Considerations for a Warning Letter include:

(i) The contribution(s) was reported timely on the correct campaign statement or report of the committee.

(ii) The contributions from that source totaled not more than \$50 over the applicable limit or ban.

(iii) The contribution was returned or attributed outside the 14 days of receiving the contribution but before the relevant election.

(iv) The contribution was outside the 90-day period preceding the relevant election.

(B) Exclusions from PREP and Tier One Streamline:

(i) The contribution(s) was not reported timely on the correct campaign statement or report of the committee.

(ii) The contributions from that source totaled more than \$500 over the applicable limit or ban.

(iii) The contribution was within the 90-day period preceding the relevant election.

(C) Violations eligible for possible inclusion in Tier Two Streamline:

(i) Committees failed to timely disclose a contribution over the limit on the correct campaign statement or report but only if the total amount over the limit was not greater than \$500.

(ii) The contribution(s) from that source totaled more than \$500 over the applicable limit but was not greater than \$1,000 over the applicable limit.

(iii) The contribution(s) being within the 90-day period preceding the relevant election but only if the total amount over the limit was not greater than \$500.

(12) Section 84308. Respondents who failed to timely disclose a contribution(s) of more than \$250 must disclose the contribution(s) to the appropriate agency unless the FPPC determines that the information has been sufficiently disclosed in the stipulation and/or other filings. Respondent officers must refund the amount greater than \$250 back to the source of the contribution(s) or the State of California General Fund, if the source of a contribution(s) cannot be located or is otherwise unavailable to receive the returned contribution.

(A) Considerations for a Warning Letter include:

(i) An untimely disclosure was untimely by 30 days or fewer and prior to a decision being rendered in the proceeding.

(ii) A party that submitted an incomplete or otherwise inaccurate disclosure made a good faith effort to determine and include the required information, and any missing or inaccurately reported contribution(s) totaled fewer than \$250.

(iii) A contribution that violated Section 84308 was greater than the limit by less than \$250, for a total contribution of less than \$500.

(iv) A participant violated Section 84308 as a result of making a good faith, but inaccurate determination that they did not qualify as a “participant” or that the officer did not qualify as an “officer of the agency.”

(B) Violations eligible for possible inclusion in PREP and Tier One Streamline:

(i) An untimely disclosure was made prior to a decision being rendered in the proceeding.

(ii) An untimely return of a contribution was untimely by 30 days or less and returned prior to a decision being rendered in a proceeding.

(iii) A contribution that violated Section 84308 was greater than the limit by less than \$500, for a total contribution of less than \$750.

(iv) 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.”

(C) Violations eligible for possible inclusion in Tier Two Streamline:

(i) An untimely return of a contribution was late by more than 30 days but was returned prior to a decision being rendered in a proceeding.

(ii) A contribution that violated Section 84308 was greater than the limit by less than \$1,000, for a total contribution of less than \$1,250.

(13) Recurring Contributions. Respondents who received recurring contributions unlawfully under Section 85701.5 must refund the amount of the unlawfully obtained contribution(s) back to the source of the contribution(s) or the State of California General Fund, if the source of a contribution(s) cannot be located or is otherwise unavailable to receive the returned contribution.

(A) Considerations for a Warning Letter include:

(i) The contribution(s) was reported timely on the correct campaign statement or report of the committee.

(ii) Affirmative consent was incomplete or incorrect but was corrected.

(iii) Some receipts were incomplete or incorrect but were corrected.

(iv) All the necessary information to cancel the recurring contribution was not included in each communication with the contributor that concerned the contribution but was included in the majority of the communications.

(v) A request to cancel or return was not completed timely but within 30 days.

(B) Violations eligible for possible inclusion in Tier One Streamline:

(i) The recurring contribution solicitation required affirmative consent from the person making the recurring contribution but was not sent with the initial solicitation but was sent in later solicitations and the recurring contributions, from that source in the aggregate, were more than \$1,000 but not more than \$10,000.

(ii) The recurring contribution solicitation did not provide all necessary information to cancel the recurring contribution in the majority of the communications with the contributor that

concerned the contribution and the recurring contributions, from that source in the aggregate, were more than \$1,000 but not more than \$10,000.

(iii) The recurring contribution was accepted in response to a solicitation that did not require affirmative consent, was returned to the contributor after 14 days but before 60 days of the earlier of receipt of a request from the contributor to return the contribution or the date on which the candidate or committee becomes aware that the solicitation of the recurring contribution was in violation and the recurring contributions, from that source in the aggregate, were more than \$1,000 but not more than \$10,000.

(iv) The recurring contribution was accepted after a contributor requested to cancel a recurring contribution and not returned within 14 days but before 60 days of the request to cancel the recurring contribution and the recurring contributions, from that source in the aggregate, were more than \$1,000 but not more than \$10,000.

CREDITS

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 83116.5, Government Code.

HISTORY

1. New section filed 2-25-2019; operative 3-27-2019 pursuant to Cal. Code Regs., tit. 2, section 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2019, No. 9).

2. Amendment filed 2-22-2021; operative 3-24-2021 pursuant to Cal. Code Regs., tit. 2, section 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2021, No. 9).

3. Amendment of subsections (d)(5)(B)(i)b. and (d)(11)(A) filed 5-12-2021; operative 6-11-2021 pursuant to Cal. Code Regs., tit. 2, section 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2021, No. 20).

4. Change without regulatory effect redesignating subsection (d)(13)(B)(i)c. as subsection (d)(13)(B)(i)b. filed 5-18-2022; operative 5-18-2022 pursuant to Cal. Code Regs., title 2, section 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2022, No. 20).

5. Repealer and new section heading and section filed 5-13-2024; operative 6-12-2024 pursuant to Cal. Code Regs., tit. 2, section 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC

regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2024, No. 20).