

1 Adopt 2 Cal Code Regs., Section 18360.2 to read:

2 **Regulation 18360.2. Eligibility Requirements and Considerations for Ethics and Lobbying**
3 **Violations – Streamline (Tiers One and Two), Warning Letters and the Political Reform**
4 **Education Program (PREP).**

5 (a) Filers may voluntarily resolve violations of the Political Reform Act by accepting a
6 warning letter, completing the Political Reform Education Program (PREP), paying a Tier One
7 Streamline penalty, paying a Tier Two Streamline penalty, or paying a Mainline penalty. The
8 Chief of Enforcement will determine the appropriate form and amount of penalty to offer in
9 settlement for a violation depending on the circumstances. Mitigating circumstances result in
10 consideration of issuance of a Warning Letter or participation in PREP instead of a Streamline
11 penalty. Aggravating circumstances result in the consideration of either the Tier Two Streamline
12 Program or a Mainline Stipulation. A Mainline Stipulation generally results in a higher penalty
13 and includes a full description of the violation and surrounding events.

14 (b) Types of Violations Eligible for a Streamline Penalty.

15 (1) Late Statement of Economic Interests.

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

17 (3) Late Lobbying Reports.

18 (4) Unreported Lobbying Activity.

19 (5) Gift Limit.

20 (6) Proper Recusal for a Conflict of Interest.

21 (7) Late Behested Payment Reports.

22 (c) Penalty Amount. Penalties are not issued for a Warning Letter or completion of PREP.

23 The streamline penalty for each violation is found in Regulation 18360.3.

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

2 (1) General Eligibility Requirements for both Streamline Programs:

3 (A) Sign and submit to the Commission a streamline stipulation, decision, and order on a
4 form provided by the Commission.

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

7 (C) The same person has not paid a prior penalty to the Commission for the same type of
8 violation in the same tier occurring within the last five years.

9 (2) General Eligibility Requirements for PREP:

10 (A) Respondent meets all the requirements listed in the PREP agreement.

11 (B) Respondents have not participated in PREP or been ordered to pay a penalty for the
12 same type of violation occurring within the last five years.

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

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

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

16 (B) Self-reported violations before public discovery and Enforcement contact.

17 (C) Violations resulted in minimal public harm.

18 (D) No longer in office or unsuccessful.

19 (E) Illness, incapacitation, death, or otherwise unable to perform duties.

20 (F) Fraudulent activity of another caused the violation.

21 (G) The person has not been issued a Warning Letter for the same type of violation
22 occurring within the last five years.

23 (4) Exclusions from both Streamline Programs, PREP and Warning Letters include:

1 (A) Any evidence of an intent to conceal or violate the Political Reform Act or
2 regulations relating to the Act.

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

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

6 (D) The extent and gravity of the public harm is high.

7 (E) Has other violations under review for prosecution that do not qualify for these
8 programs.

9 (e) Specific Requirements for Eligibility.

10 (1) Late Statement of Economic Interests. Respondents who failed to timely file a
11 Statement of Economic Interests must file the late statement with the appropriate agency.

12 (A) Considerations for a Warning Letter include:

13 (i) The late filed Statement of Economic Interests was a Leaving Office Statement.

14 (ii) The late filed Statements of Economic Interests are the Leaving Office Statement and
15 the Annual Statement that was due within three months of the date the public official left office.

16 (iii) The late filed Statement of Economic Interests was for an expanded filing where one
17 was timely filed but not the other.

18 (B) Exclusion from PREP and the Tier One Streamline Program include:

19 (i) The undisclosed economic interest(s) were from a source that had business before or
20 regularly had business before the filer's agency.

21 (C) Exclusion from PREP and both Streamline Programs include:

22 (i) The public official also had a conflict of interest violation under Sections 1090 or
23 87100 involving the undisclosed economic interest.

1 (D) Violations eligible for possible inclusion in the Tier Two Streamline Program include:

2 (i) Respondents excluded from Tier One as a result of the undisclosed economic
3 interest(s) were from a source that had business or regularly had business before the filer's
4 agency.

5 (2) Unreported Economic Interest(s) on a Statement of Economic Interests. Respondents
6 must file an amended Statement of Economic Interests with the appropriate agency disclosing
7 the previously undisclosed economic interest(s).

8 (A) Considerations for a Warning Letter include:

9 (i) Information regarding the economic interest was reported elsewhere on the statement.

10 (ii) The aggregate value of the gift(s) received from the economic interest was minimal
11 (i.e., not more than \$200).

12 (iii) The aggregate value of the income received from the economic interest was minimal
13 (i.e not more than \$1,000).

14 (B) Exclusions from PREP and the Tier One Streamline Program include:

15 (i) The undisclosed economic interest was from a source that had business before or
16 regularly had business before the filer's agency.

17 (C) Exclusion from PREP and both Streamline Programs include:

18 (i) The public official also had a conflict of interest violation under Sections 1090 or
19 87100 involving the undisclosed economic interest.

20 (D) Violations eligible for possible inclusion in the Tier Two Streamline Program include:

21 (i) Respondents excluded from Tier One as a result of the undisclosed economic interest
22 was from a source that had business before or regularly had business before the filer's agency.

1 (3) Late Lobbying Reports. Respondents who failed to timely file a lobbying report must
2 file the late report unless the FPPC determines that the information has been sufficiently
3 disclosed in the stipulation and/or other filings.

4 (A) Considerations for a Warning Letter include:

5 (i) The lobbyist was a placement agent not active in the state.

6 (ii) The lobbyist provided the report to the employer or firm who did not file the report.

7 (iii) The total required activity to be reported for that reporting period was not more than
8 \$5,000.

9 (iv) The activity was reported publicly prior to any relevant election.

10 (v) No history of not timely filing reports.

11 (vi) The filer was ill or other extenuating circumstances.

12 (vii) The lobbyist ceased employment with the Lobbyist Employer or Lobbying Firm and
13 the late report was for the calendar quarter corresponding to the month the lobbyist's
14 employment ended.

15 (B) Exclusions from PREP and the Tier One Streamline Program include:

16 (i) The total required activity to be reported for that reporting period was greater than
17 \$50,000.

18 (ii) Evidence that the filer tried to conceal lobbying activity.

19 (iii) An individual lobbied without registering.

20 (iv) Multiple reports not timely filed.

21 (v) There was evidence of a substantial amount of activity not disclosed in connection
22 with legislative or administrative actions actively lobbied during the period.

23 (vi) The undisclosed activity included campaign contributions.

1 (C) Violations eligible for possible inclusion in the Tier Two Streamline Program include:

2 (i) The total activity to be reported for that reporting period was not more than \$100,000.

3 (ii) Multiple reports not timely filed.

4 (4) Unreported Lobbying Activity. Respondents must file an amended lobbying report
5 disclosing the previously undisclosed information unless the FPPC determines that the
6 information has been sufficiently disclosed in the stipulation and/or other filings.

7 (A) Considerations for a Warning Letter include:

8 (i) The lobbyist, lobbying firm, lobbyist employer, or person had not more than \$5,000 of
9 activity not reported.

10 (ii) The activity was reported publicly prior to any relevant election.

11 (B) Exclusions from PREP and the Tier One Streamline Program include:

12 (i) The total unreported activity to be reported for that reporting period was greater than
13 20% of the activity required to be reported for that reporting period or was greater than \$50,000.

14 (C) Violations eligible for possible inclusion in the Tier Two Streamline Program include:

15 (i) The total unreported activity to be reported for that reporting period was not more than
16 \$100,000.

17 (D) Exclusions from PREP and the Tier Two Streamline Program include:

18 (i) Evidence that the filer tried to conceal lobbying activity.

19 (ii) An individual lobbied without registering.

20 (iii) There was evidence of a substantial amount of activity not disclosed in connection
21 with legislative or administrative actions actively lobbied during the period.

22 (iv) The undisclosed activity included campaign contributions.

1 (5) Gift Limit. If a Respondent receives a gift over the limit, they must return the gift or
2 reimburse the gift giver for the difference between the gift's fair market value and the applicable
3 gift limit.

4 (A) Considerations for a Warning Letter include:

5 (i) No evidence that governmental decisions were made or effected regarding the gift
6 giver by the Respondent.

7 (B) Exclusions from PREP and the Tier One Streamline Program include:

8 (i) The gift giver was a named party in, or the subject of, a governmental decision before
9 the Respondent or the Respondent's agency.

10 (ii) Failure to timely report the gift on a Statement of Economic Interests, if required.

11 (iii) The fair market value of the gift was more than \$200 over the gift limit.

12 (C) Violations eligible for possible inclusion in the Tier Two Streamline Program include:

13 (i) Respondents excluded from Tier One as a result of the gift giver being a named party
14 in, or the subject of, a governmental decision before the Respondent or the Respondent's agency
15 but did not cause a conflict of interest.

16 (ii) Respondents excluded from Tier One as a result of failing to timely report the gift on
17 a Statement of Economic Interests.

18 (iii) Respondents excluded from Tier One as a result of the fair market value of the gift
19 being more than \$200 over the gift limit but not more than \$1,000 over the gift limit.

20 (6) Proper Recusal for a Conflict of Interest. A Respondent may qualify to participate in
21 the Tier One Streamline Program if the Respondent identified a potential conflict of interest
22 regarding the governmental decision and did not take part in the decision 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 was concluded.

6 (7) Late Behested Payment Reports. A Respondent who failed to timely file a behested
7 payment report must file the late report with the appropriate agency unless the FPPC determines
8 that the information has been sufficiently disclosed in the stipulation and/or other filings.

9 (A) Exclusions from a Warning Letter, PREP, and both Streamline Programs include:

10 (i) A perceived or actual personal benefit. A “perceived personal benefit” means the Chief
11 of Enforcement believes the evidence sufficiently supports a reasonable belief or strong
12 suspicion that the Respondent received a benefit, which includes evidence of a direct benefit to a
13 family member of the Respondent.

14 (ii) The maker of the payment was a named party in, or the subject of, a governmental
15 decision before the Respondent or the Respondent's agency while the decision was pending and
16 within three months before and for three months following the date a final decision was
17 rendered. “Maker” includes the individual, the entity and any agent acting as an intermediary.
18 For governmental decisions regarding legislation, “governmental decision” includes only
19 nongeneral legislation as defined in Section 87102.6.

20 (B) Considerations for a Warning Letter include:

21 (i) First-time behested payment report filer.

22 (ii) The report was filed before public discovery and Enforcement contact.

23 (iii) No history of filing late behested payment reports within the preceding 24 months.

1 (iv) The amount reported late was \$30,000 or less for monetary payments and \$50,000 or
2 less for non-monetary payments, for a single behested payment report.

3 (v) The report was filed within 100 days of when it was due.

4 (vi) Respondent provided evidence that more than two efforts were made to obtain the
5 information timely from the maker of the payment.

6 (vii) Only a single behested payment report was late in a six-month period.

7 (C) Exclusions from PREP and the Tier One Streamline Program include:

8 (i) The amount reported late was \$50,000 or more for monetary payments and \$70,000
9 for non-monetary payments, for a single behested payment report.

10 (ii) The amount required to be reported, when divided by the number of public officials
11 participating in the behest, was \$50,000 or more.

12 (D) Exclusions from PREP and the Tier Two Streamline Program include:

13 (i) The amount to be reported on the behested payment report exceeded \$150,000.

14 (ii) The amount required to be reported, when divided by the number of public officials
15 participating in the behest, was \$150,000 or more.

16 Note: Authority cited: Section 83112, Government Code.