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To: Chair Germond, Commissioners Cardenas, Hatch, and Hayward

From: Galena West, Chief of Enforcement
Dave Bainbridge, General Counsel
Ryan P. O'Connor, Commission Counsel

Subject: Adoption of Enforcement Division's Streamline Settlement and Warning Letter Programs (Regulations 18360.1 and 18360.2)

Date: January 11, 2019

Proposed Regulations 18360.1 and 18360.2 are presented for adoption. As proposed, Regulations 18360.1 and 18360.2 will codify and expand the Commission's Streamline Settlement and Warning Letter Programs. Staff submitted a prior version of the proposed regulations to the Office of Administrative Law for notice of adoption at the Commission's January 17, 2019 meeting.

Following interested persons, Enforcement Review Task Force, and Law and Policy Committee meetings regarding the proposed regulations, a prior draft of the regulations was presented for prenotice discussion at the December 20, 2018 Commission meeting. At that meeting, Commissioners and members of the public provided comments on the draft regulations. On January 10, 2019, the Law and Policy Committee held a meeting at which Commissioner Hatch, staff, and interested parties discussed the revisions made since the Commission's December 20, 2018 meeting. Those changes are listed below. At the conclusion of the discussion, Commissioner Hatch expressed support on behalf of the Law and Policy Committee for the draft regulations as amended and recommends them for adoption.

Background

The Commission's Streamline Settlement Program was established for the Enforcement Division's prosecution of violations with limited public harm. A staff memorandum dated May 11, 2015 outlines the parameters of Enforcement's current Streamline Program. A large percentage of cases before the Commission are resolved through the existing program. In 2017, 77% of all cases presented to the Commission were resolved through the program.

Violation types that can qualify for the streamline program currently include:

- Statement of Economic Interests Non-Filer.
- Statement of Economic Interests Non-Reporter.
- Campaign Statement/Report Non-Filer.
- Campaign Statement/Report Non-Reporter.
- Lobbyist/Lobbying Firm/Lobbyist Employer/Lobbying Coalition/\$5,000-Filer Report Non-Filer.

The Enforcement Division has discretion to include or exclude any case from the program based upon mitigating and aggravating circumstances. If mitigating circumstances exist, a case will result in a warning letter rather than a fine. If aggravating circumstances exist, the case is handled through the standard administrative process (i.e. mainline). Penalties in streamline cases start at \$100 - \$200 and can increase based on the amount of activity not properly reported in the case, and the efforts required to gain compliance and resolve a case.

New Violation Categories

Staff drafted proposed Regulations 18360.1 and 18360.2 in response to the Commissioners' concerns over a lack of codification of Enforcement Division's Streamline Program, and to add additional minor violations identified by Enforcement staff and others that do not currently qualify for a streamline penalty but are consistent with the purpose of the streamline program. Those categories of minor violations that would be added to the streamline program include:

- 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

The proposed regulations remove violations for failure to timely pay \$50 annual fee from the streamline program because the Commission instructed Enforcement not to pursue such cases and is seeking either a legislative or regulatory change to address these violations.

Aggravating and Mitigating Factors

Regulation 18360.1 lists mitigating circumstances that result in consideration for a Warning Letter rather than a Streamline penalty. Likewise, the regulation lists aggravating factors that would exclude a case from the Streamline program.

Penalties

Similar to the existing streamline program, all categories of penalties in the proposed regulations have the same four-tiered structure where the fine increases with each tier based on timing of compliance. The proposed regulations modify current penalty amounts. Of the 15 distinct penalty structures, six of the violation types incorporate two penalty components – a standard penalty amount in addition to an ascending proportional penalty. This proportional penalty is calculated by multiplying the dollar amount of the activity not properly reported by a

multiplier. Currently, the multiplier is always 1%. The proposed regulation would increase the multiplier incrementally depending on when compliance is obtained, in addition to increasing the standard penalty amount at each tier. Penalties for the different types of violations are discussed below.

SEI Violations

Consistent with the current Streamline Program, under the proposed regulations the Statement of Economic Interests Non-Filer and the Statement of Economic Interests Non-Reporter violations contain only the standard penalty component without a multiplier. Penalty amounts for these violations are slightly less than currently used, and the penalty amount ranges in the latter compliance tiers have been removed for greater transparency.

Campaign Violations

The proposed regulations for Campaign Non-Filer and Campaign Non-Reporter violations contain both the standard penalty and the ascending multiplier component, as is currently the case. As proposed, the standard penalty components for these violations are less than under the existing program. However, the proportional component of the overall penalty is greater because the overall penalty amount increases by one percentage point with each compliance tier. The proportional penalty tiers also increase based on whether the statement or report was filed prior to the relevant election.

For Campaign Non-Filer violations, the current rule excludes participation in the Streamline Program if the total amount of activity on a late filed campaign statement or report exceeds \$25,000. The draft of the regulations presented at the Commission meeting on December 20, 2018 proposed to increase that cap to \$50,000. The current draft of the regulations replaces the single cap with a 10-tiered system where the cap for participation increases from \$4,000 in contributions or expenditures up to \$100,000 in contributions or expenditures, depending on the population of the jurisdiction at issue.

Currently, Campaign Non-Reporter violations do not qualify for the Streamline Program if the total amount of unreported activity is \$25,000 or more, or 20% of the contribution or expenditure for the relevant election. The proposed regulations would eliminate the \$25,000 cap but keep the 20% limit and apply the same caps from the 10-tiered system listed above.

Lobbying Violations

Currently, violations for Lobbying Report Non-Filing are eligible for the Streamline Program but Lobbying Non-Reporting is not included in the streamline program. The regulations would add Lobbying Non-Reporting violations to the Streamline Program. As proposed, Lobbying Report Non-Filing violations could qualify for streamline so long as the lobbying activity during the reporting period did not exceed \$100,000. The prior draft of this regulation had a cap of \$50,000. The current streamline program places the cap at \$25,000. Similarly, for Lobbying Non-Reporting violations, the current draft of the regulation allows for participation in the streamline program so long as the missing activity is less than 20% of the total required activity to be reported for that reporting period, up to \$100,000 in non-reporting. The prior draft of the regulation capped the unreported lobbying activity at 20% of the total lobbying activity for the reporting period.

Additional Violation Types

Of the additional violation types, a violation of the Cash Contributions or Expenditures of \$100 rule solely contains a proportional penalty, while the structures of a Campaign Bank Account or Advertising and Mass Mailing Disclosures violation incorporates a proportional penalty component as well as a standard penalty component. The Committee Naming, Recordkeeping, Gift Limit, Slate Mailer Organization Filing Issues, Proper Recusal of a Conflict of Interest, and Major Donor Notification violation structures only contain standard penalty amounts.

Approval of Streamline Stipulations

Currently, streamline stipulations appear on the Commission's monthly consent calendar for approval by the Commission. Members of the public have an opportunity at each meeting to comment on any streamline stipulation on the agenda. The Commission may reject any proposed streamline stipulation by a majority vote.

The Enforcement Task Force suggested and the Law and Policy committee is recommending a revision to that process whereby the Commission's authority to approve streamline stipulations is delegated to staff and staff would report all approved streamline stipulations periodically. The draft of the regulations considered at the December 20, 2018 Commission meeting delegated the authority to approve stipulations to the Chief of Enforcement with review by the Executive Director. The current draft of the regulations delegates the approval authority to the Chief of Enforcement but only after the streamline stipulations are published on the Commission's agenda to allow for public comment.

Revisions to the Regulations after the December 20, 2018 Commission Meeting

The following is a list of substantive revisions since the December 20, 2018 Commission meeting.

Regulation 18360.1

(1) Page 3, Line 3-4

Considerations for a Warning Letter

New: The same candidate, committee, or principal officer has not been issued a Warning Letter for the same type of violation within the last five years.

(2) Page 3, Line 11-12

Exclusions from the Streamline

New: The same candidate, committee, or principal officer has not paid a prior penalty to the Commission for the same type of violation occurring within the last five years.

(4) Page 4, Line 15-16

Changed: No late statement or report, other than a Form 470, was due prior to a relevant election and not filed at least seven days before the election.

(5) Page 4, Line 218 – Page 5, Line 13

New: Population criteria

(6) Page 5, Line 15-16

New: A 24-Hour Report due during the last 16 days before the election and not filed at least seven days before the election.

(7) Page 5, Line 17-18

New: Any 24-Hour Report not filed before the election if the information was not reported on another report or statement filed by the committee at least seven days before the election.

(8) Page 5, Line 19-21

New: The late filed report was filed more than five business days after it was due and the contribution resulted in a change to the disclosure of the committees' top contributors, as required by Section 84503.

(9) Page 6, Line 4

Changed: The total required activity to be reported for that reporting period was less than \$5,000.

(11) Page 6, Line 8-9

Changed: The total required activity to be reported for that reporting period is greater than \$100,000.

(12) Page 7, Line 13

Unreported Lobbying Activity, Contributions or Expenditures.

Considerations for a Warning Letter

Changed: The committee had less than \$2,000 of activity not reported.

(13) Page 7, Line 20-23

Changed: The total amount unreported was more than 20% of the total contributions or expenditures for the committee for the reporting period or the total amount unreported is greater than the applicable population-based limit per reporting period on the committee otherwise found in this regulation.

(14) Page 8, Line 1-2

Changed:

Lobbying Reporting: The total required activity to be reported for that reporting period is greater than 20% of the activity not to exceed \$100,000.

Regulation 18360.2

(1) Page 1, Line 3-8

Changed: Streamline penalty stipulations are approved by the Chief of Enforcement (no General Counsel) and are reported to the Commission for discussion only before they are executed. The Chief of Enforcement will include those stipulations in the next Commission agenda, as a part of the Executive Staff Report. After the close of the hearing, the Chief of Enforcement may execute all or any of the Streamline penalty stipulations, at his or her discretion.

(2) Page 3, Line 20-21

New: unless statement or report was due before the relevant election, but filed later than seven days before the election, then the 1% is increased to 2%.

Attachments:

Proposed Regulation 18360.1

Proposed Regulation 18360.2