



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811

To: Chair Miadich and Commissioner Cardenas

From: Galena West, Executive Director

Subject: Law and Policy Committee Points to Consider regarding the Streamline and Warning Letter Programs

Date: September 25, 2020

- (1) What should the criteria be for Major Donor Committees and Behested Payment reporting?
- Current proposal: Major Donor Committees
 - **Exclusions – Tier One**
 - Contributions for the calendar year exceeded \$50,000.
 - The contributions also 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.
 - **Exclusions – Tier Two**
 - The report missing was due within the last 16 days before the relevant election and was not disclosed on a 24-Hour Report filed by the recipient of the contribution before the relevant election.
 - **Eligibility – Tier Two**
 - Contributions for the calendar year were less than \$150,000 and less than three statements or reports were late during that calendar year.
 - Current proposal: Behested Payment reporting
 - **Exclusions – Tier One**
 - The maker of the payment is a named party in, or the subject of, a governmental decision before the behestor or the behestor's agency.
 - The amount reported late was \$50,000 or more for a single behested payment report.
 - The amount required to be reported, when divided by the number of public officials participating in the behest, was \$50,000 or more.
 - The behestor has paid a prior penalty to the Commission for the same type of violation occurring within the last five years.
 - **Eligibility – Tier Two**
 - The maker of the payment is a named party in, or the subject of, a governmental decision before the behestor or the behestor's agency.
 - The amount to be reported on the behested payment report exceeded \$150,000.

- The amount required to be reported, when divided by the number of public officials participating in the behest, was \$150,000 or more.
- (2) Should the criteria used to exclude cases by population of jurisdiction be modified?
- Population: Under the 2015 Streamline Policy, the threshold was \$25,000 per statement or report, regardless of jurisdiction. Under the current streamline regulations, even though the largest of jurisdictions have enjoyed an increase to \$100,000 per statement or report, approximately 90% of jurisdictions had their eligibility thresholds greatly reduced. This, in addition to the stricter 24-hour report exclusions, have contributed to a drop in cases processed through streamline from 77% to 66% in the year and half since the new rules have been in place.
- (3) Should the Commission invest resources to add an education diversion program to the options for enforcement in the future?
- Over the years the Enforcement Division has proposed an education program for first-time, inexperienced parties who attempted to comply in good faith and were unfamiliar with the filing requirements but were cooperative with the Enforcement Division when contacted. However, the Commission would need to commit significant resources to this project as it would include an expansion of the Education Unit and require a certification program.
- (4) Should the Commission add more discretion to the streamline/warning letter program?
- The regulations adopted a year and half ago include many bright line rules to respond to the concerns brought up at the time that the Enforcement Division should not have discretion. The result of this is that the Enforcement Division must exclude cases from the Streamline and Warning Letter Program if a specific criterion is met even when the overall evaluation of the case justifies a lesser treatment than a Mainline Stipulation. For instance, if a first-time filer has amended to fix their filings before the election, they will not be considered for a warning letter or streamline penalty if they exceed the population threshold for that reporting period.