

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

§ 18360.2. Eligibility Requirements and Considerations for Ethics and Lobbying 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 Streamline penalty.

- (1) Late Statement of Economic Interests.
- (2) Unreported Economic Interest(s) on a Statement of Economic Interests.
- (3) Late Lobbying Reports.
- (4) Unreported Lobbying Activity.
- (5) Gift Limit.
- (6) Proper Recusal for a Conflict of Interest.
- (7) Late Behested Payment Reports.

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

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

(B) Self-reported violations before public discovery.

(C) Violations resulted in minimal public harm.

(D) No longer in office or unsuccessful.

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

(F) Fraudulent activity of another caused the violation.

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

(2) 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.

(3) 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 person 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.

(4) 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 a Warning Letter, PREP or Streamline penalty.

(e) Specific Requirements for Eligibility.

(1) Late Statement of Economic Interests. Respondents who failed to timely file a Statement of Economic Interests must file the late statement with the appropriate agency unless 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 late filed Statement of Economic Interests was a Leaving Office Statement.

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

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

(B) Exclusion from PREP and Tier One Streamline:

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

(C) Exclusion from a Warning Letter, PREP and both Streamline Programs:

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

(D) Violation eligible for possible inclusion in Tier Two Streamline:

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

(2) Unreported Economic Interest(s) on a Statement of Economic Interests. Respondents must file an amended Statement of Economic Interests with the appropriate agency disclosing the previously undisclosed economic interest(s) unless 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) Information regarding the economic interest was reported elsewhere on the statement.

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

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

(B) Exclusion from PREP and Tier One Streamline:

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

(C) Exclusion from a Warning Letter, PREP and both Streamline Programs:

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

(D) Violation eligible for possible inclusion in Tier Two Streamline:

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

(3) Late Lobbying Reports. Respondents who failed to timely file a lobbying report must file the late report unless 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 lobbyist was a placement agent not active in the state.

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

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

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

(v) No history of not timely filing reports.

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

(B) Exclusions from PREP and Tier One Streamline:

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

(ii) The individual lobbied without registering.

(iii) Multiple reports not timely filed.

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

(v) The undisclosed activity included campaign contributions.

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

(i) The total activity required to be reported for that reporting period was greater than \$50,000 but not more than \$100,000.

(ii) Multiple reports not timely filed.

(4) Unreported Lobbying Activity. Respondents must file an amended lobbying report disclosing the previously undisclosed information unless 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 lobbyist, lobbying firm, lobbyist employer, or person had not more than \$5,000 of activity not reported.

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

(B) Exclusions from PREP and Tier One Streamline:

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

(ii) An individual lobbied without registering.

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

(iv) The undisclosed activity included campaign contributions.

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

(i) The total unreported activity for that reporting period was greater than \$50,000, but not greater than \$100,000.

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

(A) Considerations for a Warning Letter include:

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

(B) Exclusions from PREP and Tier One Streamline:

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

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

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

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

(i) The gift giver being a named party in, or the subject of, a governmental decision before the Respondent or the Respondent's agency but did not cause a conflict of interest.

(ii) Gift was not timely reported on a Statement of Economic Interests.

(iii) The fair market value of the gift being more than \$200 over the gift limit but not more than \$1,000 over the gift limit.

(6) Proper Recusal for a Conflict of Interest. A Respondent may be eligible for Tier One Streamline if the Respondent identified a potential conflict of interest regarding the governmental decision and did not take part in the decision but failed to either:

(A) Publicly identify the financial interest that gives rise to the conflict of interest or potential conflict of interest in detail sufficient to be understood by the public as detailed in Regulation 18707, subdivision (a); or

(B) Properly leave the room until after the discussion, vote, and any other disposition of the matter was concluded.

(7) Late Behested Payment Reports. A Respondent who failed to timely file a behested payment report must file the late report with the appropriate agency unless 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 behested payment report filer.

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The amount to be reported on a single, late behested payment report was greater than \$50,000 for monetary payments or was greater than \$70,000 for non-monetary payments but was not more than \$150,000.

(ii) The amount required to be reported, when divided by the number of public officials participating in the behest, was greater than \$50,000, but was not more than \$150,000.

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 first paragraph 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. 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).