



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Germond, Commissioners Cardenas, Hatch, and Hayward

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

Subject: Discussion of Enforcement Division's Streamline Settlement Program
(Regulations 18360.1 and 18360.2)

Date: December 10, 2018

Requested Action

Staff presents proposed Regulations 18360.1 and 18360.2 for discussion. To expedite approval, staff has previously submitted the proposed regulations to the Office of Administrative Law for notice of adoption at the Commission's January 17, 2019 meeting. Accordingly, the proposed regulations cannot be approved by the Commission at this time. The Commission may, however, provide input to staff, which may be incorporated into the proposal prior to the anticipated January adoption meeting. As proposed, Regulations 18360.1 and 18360.2 will codify and expand the Commission's Streamline Settlement Program. The Commission's Law and Policy Committee reviewed these regulations prior to their presentation to the Commission.

Background

The Commission's Streamline Settlement Program was established for the Enforcement Division's prosecution of violations with a lesser degree of public harm. Throughout its history, Enforcement has grappled with the correct level of prosecution for individuals and committees who have violated the Political Reform Act but have a lesser degree of public harm associated with their violation for a variety of reasons.¹ As a result, as early as 1999, Enforcement proposed handing these cases through a streamlined procedure where the fines are reduced and the Stipulation, Decision and Orders presented to the Fair Political Practices Commission are more abbreviated and standardized. Enforcement has been successfully managing this program since its inception.

A staff memorandum dated May 11, 2015 continues to outline the parameters of Enforcement's Program. Currently, a large percentage of cases before the Commission are resolved through the existing Streamline Program. For instance, 77% of all cases presented to the Commission in 2017 were resolved through the program. Violations included in the program include:

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

- SEI Non-Filer.
- SEI 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. A non-exhaustive list of aggravating circumstances include: prior non-filing/non-reporting history, prior Enforcement prosecutions, accompanying violations, or evidence of intent to conceal. Mitigating circumstances include: no longer in office, illness, level of sophistication, or other extenuating circumstances. And the activity cap per campaign or lobbying statement or report to be included in the program was set at \$25,000 in activity.

Discussion and Summary of Proposed Actions

Staff has 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. The proposed regulations expand the types of violations encompassed in the program as follows:

- Cash Contribution or Expenditures
- 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

Although the above types of violations expand the program, please note that the Failure to Timely Pay Recipient Committee \$50 Annual Fee is no longer encompassed by the Streamline Program since the Commission is pursuing either a legislative or regulatory change to address these violations. Further, Regulation 18360.1 explicitly states that the outlined mitigating circumstances result in consideration of the issuance of a Warning Letter rather than a Streamline Penalty. Likewise, the regulation states that the outlined aggravating circumstances result in the consideration of a Mainline Stipulation rather than a Streamline Penalty, which is a stipulation generally resulting in a higher penalty and includes a full description of the violation and surrounding events. In addition, the cap participation in the Streamline Program has been increased for late filing violations to \$50,000 of activity per statement or report.

All types of penalties have the same four-tiered structure based on timing of compliance. Yet, the proposed regulations modify all penalty amounts previously implemented. Six of the

violation types incorporate two penalty components – a standard penalty amount in addition to an ascending proportional penalty. The individual penalty components increase by violation tier based on timing of compliance.

As previously structured, the SEI Non-Filer and the SEI Non-Reporter violations contain only the standard penalty component. Penalty amounts for these violations are slightly less than currently used through the program and the penalty amount ranges in the latter compliance tiers have been removed for greater transparency. The Campaign Non-Filer and Campaign Non-Reporter violations contain both components. The standard penalty components for these violations are also less than previously implemented. However, the proportional component of the overall penalty is greater because the overall penalty amount increases by one percentage point with each compliance tier. In addition, the Campaign Non-Reporter violations are now capped by percentage rather than amount per campaign statement. The former rule capped participation in the Streamline Program if the total amount of activity for the campaign statement exceeded \$25,000 and the proposed regulations change the cap to the total amount unreported was more than 25% of the total contributions or expenditures for that campaign statement.

Previously, only Lobbying Non-Filers were eligible to participate in the Streamline Program. Late reporting of lobbying activity was not included. This proposed regulation adds those violations to the program and caps them at the same amount as late reporting or campaign statement – the total amount of activity unreported was more than 25% of the total required to be reported. The penalty structure for these violations contain a lesser standard penalty component than late filing the entire statement or report, as well as an ascending proportional component. Of the additional violation types, a Cash Contribution or Expenditures violation 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 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.

It is anticipated that the Enforcement Review Task Force will review the proposed regulations at separate public meetings prior to the December 20, 2018 Commission meeting and either present their recommendations to the Law and Policy Committee at its upcoming meeting or to the full Commission at the December Commission meeting. Pending further recommendations of the Law and Policy Committee and the Enforcement Review Task Force, staff recommends that the Commission approve the scheduling of the proposed regulations for consideration and possible adoption at its January 17, 2019 Commission meeting.

Attachments:

Proposed Regulation 18360.1

Proposed Regulation 18360.2