

1 Repeal 2 Cal Code Regs., Section 18360.3 to read:

2 ~~§ 18360.3. Eligibility Requirements and Considerations — Tier Two Streamline Program.~~

3 ~~The Chief of Enforcement may include or exclude any filer from receiving a Tier Two~~
4 ~~streamline penalty based upon mitigating or aggravating circumstances and the totality of the~~
5 ~~circumstances, including situations where an exclusion may apply. Violations excluded from~~
6 ~~Tier One Streamline Program can be considered for Tier Two Streamline penalties if aggravating~~
7 ~~circumstances do not result in the exclusion from the program based on the criteria below.~~

8 ~~Excluded violations will be processed as Mainline Stipulations. A Mainline Stipulation generally~~
9 ~~results in a higher penalty and includes a full description of the violation and surrounding events.~~

10 ~~(a) Types of Violations Eligible.~~

11 ~~(1) Late Statements and Reports, including Campaign, Statements of Economic Interests,~~
12 ~~and Lobbying.~~

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

14 ~~(3) Unreported Lobbying Activity, Contributions or Expenditures.~~

15 ~~(4) Cash Contribution(s) or Expenditure(s) of \$100 or More.~~

16 ~~(5) Campaign Bank Account.~~

17 ~~(6) Committee Naming.~~

18 ~~(7) Advertising and Mass Mailing Disclosures.~~

19 ~~(8) Recordkeeping.~~

20 ~~(9) Gift Limit.~~

21 ~~(10) Major Donor Filers.~~

22 ~~(11) Behested Payment Reports.~~

1 ~~(b) Penalty Amount. The streamline penalty for each violation is found in Regulation~~
2 ~~18360.2.~~

3 ~~(c) General Requirements for Eligibility, Considerations, Factors, and Exclusions.~~

4 ~~(1) General Eligibility Requirements:~~

5 ~~(A) Sign and submit to the Commission a streamline stipulation, decision, and order on a~~
6 ~~form provided by the Commission, and~~

7 ~~(B) Pay a proposed penalty by cashier's check, electronic payment, or money order in an~~
8 ~~amount as determined in Regulation 18360.2.~~

9 ~~(2) Considerations and Factors.~~

10 ~~(A) Exclusions from Tier Two Streamline Program include:~~

11 ~~(i) Any evidence of an intent to conceal or violate the Political Reform Act or regulations~~
12 ~~relating to the Act.~~

13 ~~(ii) Presented the FPPC false or altered evidence.~~

14 ~~(iii) Made false statements to the FPPC regarding material facts.~~

15 ~~(iv) Evidence of intentional interference with a witness in the FPPC matter.~~

16 ~~(v) The extent and gravity of the public harm in the aggregate is more than minimal.~~

17 ~~(vi) Has other violations under review for prosecution that do not qualify for a streamline~~
18 ~~penalty.~~

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

21 ~~(i) The same candidate, committee, or principal officer has paid a Tier One penalty to the~~
22 ~~Commission or received a Warning Letter from the Commission for the same type of violation~~
23 ~~occurring within the last five years.~~

1 ~~(ii) For late statements and reports, history of not timely filing statements or reports.~~

2 ~~(d) Specific Requirements for Eligibility.~~

3 ~~(1) Late Statements and Reports.~~

4 ~~(A) To enter into a streamline settlement, an individual who failed to timely file a~~
5 ~~campaign statement or report, lobbying report, or Statement of Economic Interests must file the~~
6 ~~late statement or report with the appropriate agency unless the relevant information was reported~~
7 ~~by the person elsewhere or the FPPC determines that the information has been sufficiently~~
8 ~~disclosed in the stipulation and/or other filings.~~

9 ~~(B) Statement of Economic Interests — Considerations and Factors.~~

10 ~~(i) Violations eligible for possible inclusion in the Tier Two Streamline Program include:~~

11 ~~a. The public official has paid a Tier One penalty to the Commission or received a~~
12 ~~Warning Letter from the Commission for the same type of violation occurring within the last five~~
13 ~~years.~~

14 ~~b. The undisclosed economic interests were from a source that was regulated by or had~~
15 ~~business before the filer's agency but did not cause a conflict of interest violation under Sections~~
16 ~~1090 or 87100.~~

17 ~~(C) Campaign Statement or Report — Considerations and Factors.~~

18 ~~(i) Violations eligible for possible inclusion in the Tier Two Streamline Program include:~~

19 ~~a. Committees excluded from Tier One as a result of the limits based on population for~~
20 ~~the Tier One Streamline Program but limited to a maximum of \$100,000 in activity for the~~
21 ~~relevant statement or report.~~

1 ~~b. A 24-Hour Report required to be filed by a committee as defined in Section 82013 (a)~~
2 ~~and (b) during the last 16 days before the election and not filed before the election unless the~~
3 ~~amount required to be reported was \$50,000 or greater.~~

4 ~~c. Any 24-Hour Report required to be filed by a committee as defined in Section 82013~~
5 ~~(a) and (b) and not filed before the election and the contribution or expenditure was not reported~~
6 ~~on another report or statement filed by the committee before the election, unless the subject~~
7 ~~contribution or expenditure would have disclosed an advertisement or mass mailing paid for or~~
8 ~~sent by the committee, and the advertisement or mass mailing failed to disclose the name of the~~
9 ~~committee in accordance with Section 84502 or 84305.~~

10 ~~(ii) Exclusions from the Tier Two Streamline Program include:~~

11 ~~a. The late filed report was filed more than five business days after it was due and the~~
12 ~~timely reporting of the contribution would have required a change to the disclosure of the~~
13 ~~committee's top contributors, as required by Sections 84501, subdivision (c) and 84503.~~

14 ~~(D) Lobbying Reports Required under Chapter 6 of the Political Reform Act —~~
15 ~~Considerations and Factors.~~

16 ~~(i) Exclusions from the Tier Two Streamline Program include:~~

17 ~~a. Evidence that the filer tried to conceal lobbying activity.~~

18 ~~b. An individual lobbied without registering.~~

19 ~~c. There was evidence of a substantial amount of activity not disclosed in connection with~~
20 ~~legislative or administrative actions actively lobbied during the period.~~

21 ~~d. The undisclosed activity included campaign contributions.~~

22 ~~(ii) Violations eligible for possible inclusion in the Tier Two Streamline Program include:~~

1 a. ~~The total required activity to be reported for that reporting period is greater than~~
2 ~~\$50,000 but less than \$100,000.~~

3 b. ~~Multiple reports not timely filed.~~

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

5 ~~(A) Eligibility Requirements: File an amended Statement of Economic Interests with the~~
6 ~~appropriate agency disclosing the previously undisclosed economic interest.~~

7 ~~(B) Considerations and Factors.~~

8 ~~(i) Exclusions from the Tier Two Streamline Program include:~~

9 a. ~~The undisclosed economic interest caused a conflict of interest violation under~~
10 ~~Sections 1090 or 87100.~~

11 ~~(ii) Violations eligible for possible inclusion in the Tier Two Streamline Program include:~~

12 a. ~~The undisclosed gift(s) or income received from a source that was regulated by or had~~
13 ~~business before the filer's agency.~~

14 ~~(3) Unreported Lobbying Activity, Contributions or Expenditures.~~

15 ~~(A) Eligibility Requirements: File an amended campaign statement or report that includes~~
16 ~~all required information including contributions received, expenditures made, or other activity.~~

17 ~~(B) Considerations and Factors.~~

18 ~~(i) Violations eligible for possible inclusion in the Tier Two Streamline Program include:~~

19 a. ~~Campaign Reporting: The total amount unreported is greater than the applicable~~
20 ~~population based limit per reporting period on the committee otherwise found in Regulation~~
21 ~~18360.1 but less than \$100,000.~~

22 b. ~~Lobbying Reporting: The total unreported activity to be reported for that reporting~~
23 ~~period is less than \$100,000.~~

1 ~~(4) Cash Contribution(s) or Expenditure(s) of \$100 or More. Cash means legal tender and~~
2 ~~cashier's checks or similar instruments not drawn on the contributor's account and that does not~~
3 ~~include the name of the contributor on its face.~~

4 ~~(A) Eligibility Requirements: Refund to the source of the contribution or the State of~~
5 ~~California General Fund, if the source of a contribution cannot be determined. Disclose the~~
6 ~~source of the contribution(s) or recipient(s) of the expenditure(s) on the appropriate campaign~~
7 ~~statement(s) or report(s).~~

8 ~~(B) Considerations and Factors.~~

9 ~~(i) Exclusions from the Tier Two Streamline Program include:~~

10 ~~a. The person made personal use of campaign funds.~~

11 ~~(ii) Violations eligible for possible inclusion in the Tier Two Streamline Program include:~~

12 ~~a. Failure to disclose the cash contribution(s) or expenditure(s) on campaign statement(s)~~
13 ~~or report(s) if the total amount of cash is \$1,000 or less for that statement or report.~~

14 ~~b. The percentage of cash contributions and expenditures of \$100 or more exceeds 25%~~
15 ~~but is not greater than 50% of total campaign contributions and expenditures of the committee~~
16 ~~for the reporting period.~~

17 ~~c. The total amount of cash contributions and expenditures for the reporting period~~
18 ~~exceeds \$10,000 but is not greater than \$25,000.~~

19 ~~(5) Campaign Bank Account.~~

20 ~~(A) Eligibility Requirements: Disclose the contribution(s) or expenditure(s) on the~~
21 ~~appropriate campaign statement(s) or report(s).~~

22 ~~(B) Considerations and Factors.~~

23 ~~(i) Exclusions from the Tier Two Streamline Program include:~~

- 1 a. ~~The person made personal use of campaign funds.~~
- 2 b. ~~The campaign records were insufficient to determine if use of another account~~
- 3 ~~concealed other violations.~~

4 ~~(ii) Violations eligible for possible inclusion in the Tier Two Streamline Program include:~~

- 5 a. ~~The total amount of all contributions not deposited in a campaign bank account during~~
- 6 ~~the statement period exceeds 10% but is less than 40% of the total contributions received for that~~
- 7 ~~period or the total amount exceeds \$10,000 but is less than \$25,000.~~

- 8 b. ~~The total amount of all campaign expenditures not from the campaign bank account~~
- 9 ~~during the statement period exceeds 10% but is less than 40% of the total amount of all~~
- 10 ~~campaign expenditures for that period or the total amount exceeds \$10,000 but is less than~~
- 11 ~~\$25,000.~~

12 ~~(6) Committee Naming.~~

13 ~~(A) Eligibility Requirements: Committee name must be amended to comply with~~

14 ~~committee naming requirements.~~

15 ~~(B) Consideration and Factors.~~

16 ~~(i) Exclusions from the Tier Two Streamline Program include:~~

- 17 a. ~~Name was intentionally misleading or ambiguous.~~

18 ~~(ii) Violations eligible for possible inclusion in the Tier Two Streamline Program include:~~

- 19 a. ~~Incorrect name caused advertisements to be incorrect.~~
- 20 b. ~~Incorrect name failed to disclose a single major contributor, major donor, or sponsor.~~
- 21 c. ~~The committee had activity over \$10,000 but less than \$50,000 for the reporting period~~
- 22 ~~during which the committee name was incorrect.~~

23 ~~(7) Advertising and Mass Mailing Disclosures.~~

1 ~~(A) Eligibility Requirements: Correction of the advertisement or mass mailing, if~~
2 ~~feasible, was done.~~

3 ~~(B) Considerations and Factors.~~

4 ~~(i) Violations eligible for possible inclusion in the Tier Two Streamline Program include:~~

5 ~~a. The violation resulted from a lack of committee formation through ignorance of the~~
6 ~~requirements and the committee raised less than \$25,000 and spent less than \$25,000.~~

7 ~~b. The violation was inadvertent or negligent and was disclosed on a campaign statement~~
8 ~~or report of the committee but is likely to result in confusion regarding the identity of a top~~
9 ~~contributor, sponsor, controlling candidate, or ballot measure supported or opposed or whether~~
10 ~~the advertisement is an independent expenditure.~~

11 ~~e. The advertisement or mass mailing contains less than four missing or incorrect~~
12 ~~disclosures or display requirements in the disclaimer and included in those errors is no more than~~
13 ~~two of the following: (1) “ad paid for by” or “paid for by” requirement, (2) top contributor~~
14 ~~information (top contributor must be substantially correct), (3) the statement that the~~
15 ~~advertisement was not authorized by a candidate or committee controlled by a candidate, or (4)~~
16 ~~the committee name requirement. Only one of the errors can be a top contributor, and the top~~
17 ~~contributor must be substantially correct to be included in the Tier Two Streamline Program. A~~
18 ~~disclosure that fails to meet sizing requirements to the extent that the disclosure is not legible to~~
19 ~~the average viewer is considered a “missing or incorrect disclosure” and not “substantially~~
20 ~~correct.”~~

21 ~~(8) Recordkeeping (as required by Section 84104 and Regulation 18401).~~

22 ~~(A) Considerations and Factors.~~

23 ~~(i) Exclusions from the Tier Two Streamline Program include:~~

- 1 a. The lack of recordkeeping appears to be intentional.
- 2 (ii) Violations eligible for possible inclusion in the Tier Two Streamline Program include:
- 3 a. The inadvertent or negligent lack of recordkeeping inhibited audit efforts.
- 4 b. The inadvertent or negligent lack of recordkeeping made it impracticable to determine
- 5 if a person substantially complied with the Act's campaign reporting requirements.
- 6 c. The inadvertent or negligent lack of recordkeeping may have inhibited discovery of
- 7 other violations.
- 8 (9) Gift Limit (contained within Sections 86203 or 89503).
- 9 (A) Eligibility Requirements: If a person receives a gift over the limit, they must return
- 10 the gift or reimburse the giver for the difference between the gift's fair market value and the
- 11 applicable gift limit.
- 12 (B) Considerations and Factors.
- 13 (i) Violations eligible for possible inclusion in the Tier Two Streamline Program include:
- 14 a. The gift giver is a named party in, or the subject of, a governmental decision before the
- 15 gift recipient or the gift recipient's agency but did not cause a conflict of interest.
- 16 b. Failure to report the gift on a Statement of Economic Interests, if required.
- 17 c. The fair market value of the gift is more than \$200 over the gift limit but less than
- 18 \$1,000 over the gift limit.
- 19 (10) Major Donor Filers.
- 20 (A) Eligibility Requirements. To enter into a streamline settlement, an individual who
- 21 failed to timely file a campaign statement or report as a major donor committee must file the late
- 22 statement or report with the appropriate agency unless the relevant information was reported by

1 the person elsewhere or the FPPC determines that the information has been sufficiently disclosed
2 in the stipulation and/or other filings.

3 ~~(B) Considerations and Factors.~~

4 ~~(i) Exclusions from the Tier Two Streamline Program include:~~

5 a. ~~The contribution also required 24 Hour Reports to be filed within the last 16 days
6 before the relevant election and the recipient of the contribution did not file a 24 Hour Report
7 before the relevant election.~~

8 ~~(ii) Violations eligible for possible inclusion in the Tier Two Streamline Program include:~~

9 a. ~~Contributions for the calendar year were less than \$150,000 and less than three
10 statements or reports were late during that calendar year.~~

11 ~~(11) Behested Payment Reports.~~

12 ~~(A) Eligibility Requirements. To enter into a streamline settlement, an individual who
13 failed to timely file a behested payment report must file the late report with the appropriate
14 agency unless the FPPC determines that the information has been sufficiently disclosed in the
15 stipulation and/or other filings.~~

16 ~~(A) Considerations and Factors.~~

17 ~~(i) Exclusions from the Tier Two Streamline Program include:~~

18 a. ~~A perceived or actual personal benefit. A “perceived personal benefit” means the
19 Enforcement Chief believes the evidence sufficiently supports a reasonable belief or strong
20 suspicion that the official received a benefit, which includes evidence of a direct benefit to a
21 family member of the official.~~

22 b. ~~The maker of the payment is a named party in, or the subject of, a governmental
23 decision before the behestor or the behestor's agency while the decision is pending and within~~

1 ~~three months before and for three months following the date a final decision is rendered.~~
2 ~~“Maker” includes the individual, the entity and any agent acting as an intermediary. For~~
3 ~~governmental decisions regarding legislation, “governmental decision” includes only nongeneral~~
4 ~~legislation as defined in Section 87102.6.~~

5 ~~c. The amount to be reported on the behested payment report exceeded \$150,000.~~

6 ~~d. The amount required to be reported, when divided by the number of public officials~~
7 ~~participating in the behest, was \$150,000 or more.~~

8 ~~NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 1090, 84104 and~~
9 ~~87100, Government Code.~~