



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

Enforcement Division FY22 Case Closure Plan

Updated March 2022

Mission

The mission of the Ethics Commission is to practice and promote the highest standards of integrity in government. We achieve that by delivering impactful programs that promote fair, transparent, and accountable governmental decision making for the benefit of all San Franciscans. Because public service should be carried out in a way that builds and preserves public trust, our aim is to ensure that San Franciscans can have confidence that the operations of the City and County and the decisions made by its officials and employees are fair and just and are made without any regard to private or personal gain.

Guiding Principles

Principles that help guide the Commission's investigative and enforcement work in practice are reflected in its strategic operational goals for the fiscal year. These goals include several designed to fulfill the Ethics Commission's oversight mandate as an independent administrative enforcement agency, including:

- *identify, investigate, and remedy unlawful conduct* under the jurisdiction of the Commission to support the effectiveness and impact of laws and the policy purposes for which they were established;
- *fair, thorough, and timely investigations and case outcomes* are central to serve as an effective deterrent and promote accountability in government; and
- *continuous improvement, flexibility, and operational transparency* are essential to ongoing program effectiveness and critically necessary in an ongoing COVID-19 environment.

The FY22 Case Closure Plan is consistent with the August 2020 Budget and Legislative Analyst (BLA) *Performance Audit of the Ethics Commission* recommendations, which the Commission agreed with to further improve the Commission's processes and practices. In building on existing foundations that the Commission has been developing, implementation of the BLA's recommendations by the Commission will further advance the impact of its enforcement authority and mandate.

The FY22 Case Closure Plan builds on steps the Enforcement Division is implementing contemporaneously to enhance investigative case tracking and performance management (BLA

recommendation 10) and specifically responds to the following three BLA Recommendations that the Executive Director should, by December 31, 2020:

- Develop a plan to: (a) increase the Division's annual case closure rate relative to the number of investigations opened, and (b) resolve open investigations that are more than two-years old; and report on progress quarterly to the Ethics Commission. *(Recommendation 9)*
- Continue to develop the expanded Fixed Penalty Plan, and present for consideration to the Ethics Commission by January 2021 in order to enable streamlined resolution of an expanded portfolio of investigations. The presentation should include an evaluation of the portion of investigations that would fall under the expanded Fixed Penalty Policy and the estimated reduction in case timelines in order to better understand the projected relative benefit of this change. *(Recommendation 11)*
- Establish goals for completing whistleblower retaliation investigations and specify how whistleblower retaliation cases should be prioritized among other cases to ensure timely resolution (in coordination with recommendation [10]) *(Recommendation 15)*

This Plan is designed to formalize and document the application of enforcement review processes and methods the Division was established as a baseline approach through the FY21 Case Closure Plan. The Division will continue to build from that foundation in subsequent years based on its experience applying these approaches and tracking their progress toward goals established in the Plan.

Resource Commitment

As of FY22, the Commission's Enforcement Division has seven investigator position authorities, two of which are vacant and in recruitment planning stage at the time this Plan was updated. These positions are responsible for investigating alleged violations of the law and managing case resolution within established Code and regulatory procedures and policies of the Commission to ensure allegations are fully and objectively evaluated and that those who violate the law are held publicly accountable for their actions. Violations of the law may be remedied through stipulated settlements that include payment of a fine and public acknowledgement of responsibility for the violation, or by imposition of monetary penalties levied by the five-member Ethics Commission as provided for under the law following a public hearing on the merits and determination that a violation occurred.

The seven investigators work with the Director of Enforcement in support of the Commission's oversight and accountability work. The development, execution, and monitoring of the Case Closure Plan is led by the Director of Enforcement working in close collaboration with the Division's team of investigators.

This Plan is premised on the availability of existing Ethics Commission resources, including staff recruitment and retention, and is designed to be an evolving one that can be adapted as needed based on additional developments as may be warranted.

FY22 Case Closure Plan

I. Goals

Increase public accountability and heighten deterrence of unlawful conduct through enhanced effectiveness of Enforcement matter outcomes, including by increasing capacity for publicly resolving more matters annually and decreasing the average timeline by which matters are reviewed and resolved.

II. Methods

Streamlined Administrative Resolution Program (SARP)

- The Commission adopted the [SARP Policy](#) on February 12, 2021. The program allows for a streamlined administrative enforcement process for less severe violations.
- SARP provides accountability for violations of City laws while reducing the time and resources needed to resolve more routine enforcement matters. This frees up Enforcement Division resources to be refocused on more severe violations and more complex cases.
- Staff targets a 6-month timeline for resolving matters conducted through SARP.

Accelerate Case Closure for both SARP and Mainline (non-SARP) Cases

- Continue administration of SARP to accelerate resolution of more routine matters and allow more complex investigative matters to receive greater allocation of timely investigative resources.
- Apply during the Preliminary Review process the discretionary factors the Commission adopted in August 2019 to focus investigations on the complaints with the most severe public harm, the highest probable impact of a Commission resolution, and the highest probability of substantiating the allegations.
- Continue to implement enhanced case tracking methods and protocols, including status updates, to ensure that the status of cases can be actively monitored and collaboration between investigators and the Director of Enforcement can be effectively planned.
- Operationalize the new case management system, which will provide for enhanced case training and statistics.

To resolve open investigations that are more than two years old, Enforcement Staff additionally:

- On a quarterly basis, review full caseload docket using the Enforcement Round Table process to evaluate relative prioritization of all open matters.
- On a quarterly basis, identify matters opened at least 12 months prior and examine the relative significance of that matter compared to other allegations on caseload docket and evaluate, in light of the evidence gathered to date, the probability of substantiating the allegations.
- Based on evaluation of case status, relative significance, and potential resolution prospects, determine whether to prioritize the matter by focusing investigative efforts there to resolve it within two years or otherwise to close the matter on the basis of the Commission's discretionary factors.

To resolve open whistleblower retaliation investigations, Enforcement Staff will additionally:

- Approach respondents early in the investigation and use a respondent questionnaire to quickly obtain basic facts that indicate the likelihood of retaliatory conduct.
- Seek to complete preliminary review of all whistleblower retaliation matters within 90 days of receiving a complaint.
- Staff will weigh the relative priority of retaliation cases in the same way that Staff weigh the relative priority of all cases, namely by applying the same discretionary considerations to retaliation allegations as they do to other allegations, including the relative severity of the adverse action alleged and the probability of substantiating that whistleblowing substantially motivated the adverse action.

III. Indicators of Progress

Staff may evaluate the effectiveness of the Case Closure Plan and the Division’s ability to implement its goals and methods by its ability to, among other things:

- Resolve all matters in less than 24 months, as permitted by complexity of the allegations, potential delays imposed by City Attorney or District Attorney investigative holds, cooperation of witnesses and respondents, and resource availability.
- Conduct the preliminary review of complaints within an average of three months.
- Manage cases within the Streamlined Administrative Resolution Program according to proposed timeframes, including by maintaining average resolution timeframes at six months or less.

IV. Process for tracking progress towards goal achievement

In administering the Case Closure Plan, the Director of Enforcement:

- Identifies, monitors, and adjusts resources necessary to develop and sustain Plan framework.
- Identifies and monitors key progress indicators to enable snapshots of case status and priority and to evaluate any emerging trends or impediments to progress.
- Collaborates with Executive Director to jointly review Plan and progress no less than quarterly to enable adjustment of goals, approaches, or milestones as may be necessary.
- Discusses case progress and prioritization bi-weekly through investigator roundtables to help ensure case approaches and reprioritization are adjusted as may be indicated.
- Delivers a public summary to Commission on case resolution and current case load statistics on quarterly basis.
- Provides a public summary of Plan achievements, progress, or challenges to be included in Ethics Commission Annual Report.

V. Process for evaluating, updating, and revising methods and procedures

To ensure approaches and procedures are regularly evaluated, updated, or revised as may be necessary to ensure the Case Closure Plan is effective in meeting its goals:

- specific approaches, methods, and procedures used will be evaluated as noted above at fiscal year-end to identify any revisions for subsequent fiscal year Case Closure Plan and enable the Plan to be operationalized in Enforcement Division performance objectives and workplans;
- the Plan will also be reviewed annually at fiscal mid-year in conjunction with development of the Ethics Commission annual budget submission to assess what future resource allocations may be necessary for its implementation;
- changes to laws, regulations, or policies will trigger review of applicable processes as may be necessary; and
- as resources are available, additional methods to obtain and review assessment data will continue to evolve as tools available to the Enforcement Division continue to develop.