

Top Ten Steps to Fast Tracking Your Bank's Political Activity Compliance Plan

By Rebecca Moll Freed

In today's political climate, smart banks take a proactive approach to educating officers, employees and board members about political activity compliance. Just as a bank's code of conduct addresses sexual harassment, privacy of customer information and customer relations, a bank's code of conduct should address the dos and don'ts of political activity.



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Since 1911, New Jersey banks have been subject to the regulated industry ban.

The ban prohibits banks and their majority shareholders from making political contributions. Despite this prohibition, invitations for political fundraisers are likely crossing the desks of bank officers, employees and board members on a regular basis. Because these individuals have a First Amendment right to participate in the political process and may not be aware of the nuances of the regulated industry ban and pay-to-play restrictions, banks need to put protocols in place to assist compliance with the law.

While it is true that 2013 was a busy election year in New Jersey – with a gubernatorial election, all 120 seats of the legislature up for grabs, a host of municipal races and two ballot questions on the November ballot – political contribution requests do not seem to be slowing down. This year is also likely to be a busy political year with federal elections, including a race for U.S. Senate, local races in many school districts, municipalities and counties, and New Jersey Assembly candidates getting ready to run again in 2015.

Although no two banks or situations are the same, following these basic tips will put your bank on the fast track to compliance.

Step One: Become familiar with the regulated industry ban. In short, the bank must ensure that bank funds and resources are not used in connection with political activity. This includes, but is not limited to: general treasury funds, conference rooms, letterhead, envelopes, postage machines, email, copy machines and bank staff.

Step Two: Determine whether your bank employees have formed or would like to form a voluntary employee continuing political committee (CPC) or political action committee (PAC). Although the regulated industry ban prohibits banks from forming a corporate CPC or PAC, a carve-out exists for voluntary employee CPCs and PACs. The employee CPC/PAC must function independently from the bank and may not use bank resources in connection with its operation.

Step Three: Determine whether the bank currently holds government contracts in New Jersey and/or wishes to preserve eligibility for future government contracting opportunities. A bank may be subject to pay-to-play restrictions if, for example, the bank serves as a depository for a government entity.

Step Four: Become familiar with pay-to-play restrictions. Keep in mind that the law may vary from one government entity to another.

Step Five: Determine the department or individual responsible for assisting compliance with the law.

Step Six: Draft language designed to assist compliance with the law. The language can be included in the bank's already existing code of conduct or can be drafted as a stand-alone compliance policy.

Step Seven: Determine who is covered by both the regulated industry ban and applicable pay-to-play restrictions. Inform those people that they are covered. It goes without saying, but if someone does not know that they are covered by the regulated industry ban and/or pay-to-play restrictions,

they might not realize what compliance with the law entails.

Step Eight: Conduct training. Remember, a policy isn't worth the paper it is written on if nobody knows what it says.

Step Nine: Conduct another training. Remember, people change positions within a bank, people retire and people move on in their careers. Keep in mind that just because all relevant people are educated *today* does not mean that all relevant people will be educated tomorrow.

Step Ten: Take a breath! Political activity compliance programs do not need to be developed and implemented overnight. However, having an effective plan in place certainly helps bank officers and board members sleep well knowing that they have taken necessary steps to mitigate against reputational risk, loss of government contracting opportunities and potential violations of the regulated industry ban.

Compliance with New Jersey's regulated industry ban and pay-to-play restrictions may seem overwhelming. However, as set forth above, when compliance is dissected on a step-by-step basis, it not only becomes manageable, but its value to the bank becomes clear.

The reality is that we live in a world with important (and often controversial) political issues. Expecting officers, employees and board members to sit on the sidelines is not realistic. In today's world, savvy banks need to embrace this fact, establish meaningful compliance programs and put their best foot forward not only internally, but also externally, to ensure that their corporate reputation is not harmed by a political scandal. ■

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