



Compliance Connections

Helping You Avoid Ethics, Lobbying & Campaign Finance Pitfalls

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What Went Wrong? Using Corporate Funds for Political Fundraisers

By Maria J. Armstrong

Corporations must be vigilant when reimbursing their lobbyists and employees who host or attend political fundraisers and other campaign events. Using corporate funds to purchase a ticket to a political fundraiser, either directly or by reimbursing an employee, violates the ban contained in both state and federal law on the use of corporate funds for political activities. Reimbursing employees for the collateral expenses of hosting or attending a fundraiser is also a violation.

Freddie Mac learned this the hard way in 2006 when it settled with the Federal Elections Commission,

agreeing to pay a \$3.8 million fine for, among other things, reimbursing members of its government relations staff for catering, event planning services and other expenses associated with political fundraisers.

If you have employees who attend political fundraisers, make sure related expenses are reimbursed by your PAC, not the company.

Federal Elections Commission, Conciliation Agreement, executed Apr. 17, 2006, MUR 5390.

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Five Reasons to Adopt an Effective Corporate Ethics and Compliance Program

By Maria J. Armstrong

In the wake of the Enron scandal and other headline-grabbing problems, the federal government required publicly traded companies to adopt robust corporate ethics and compliance programs. In the intervening years, various regulators have added and changed requirements, enacted detailed laws and stepped up enforcement in a number of areas... and more regulations are coming.

Today, detailed policy manuals, a full staff of compliance professionals and rigorous training programs are the norm at most Fortune 500 companies. But what about your company? If you are not a Fortune 500 company, should you adopt a compliance program, and is it worth the cost? Yes and yes.

Here are the top five reasons why you need a compliance program:

1. **Stay out of Trouble.** Of course, preventing a violation is the most important reason to adopt and enforce a good ethics and compliance program. A good corporate compliance program can help you to identify problem areas early and

avoid costly mistakes. A good program does not need to be expensive and should be tailored to your company's business. Such a program will focus on the areas where you are exposed to the most risk, whether that is ethics, environmental, employment, government procurement, antitrust or any area where local, state or federal laws provide for corporate criminal or civil liability.

2. **Protect Your Reputation.** The adage "any press is good press" is just not true when it comes to ethics violations and compliance mistakes. Violations, or even suspected or rumored violations, can cause reputational damage to your company and create a costly advantage for your competitors. An effective program will sensitize employees to key issues and solidify your reputation as a diligent, ethical business.
3. **Stay out of Court.** Depending on the type of offense, having a robust compliance policy can save the company from adverse legal action, even if a problem arises. When employees, subcontractors or business partners make

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mistakes or bad decisions, a solid compliance program and a knowledgeable corporate counsel can often convince a regulator or prosecutor not to press charges and to take a less aggressive route.

4. **Mitigate Your Damages.** If there is a problem, enforcement officials and the courts generally look more favorably on companies that tried to prevent problems with solid corporate policies than those that did not. In fact, under the U.S. Federal Sentencing Guidelines, a corporation that cooperates with investigations can earn up

to a 95 percent reduction, but only in fines, if it maintained an effective ethics and compliance program at the time of the violation.

5. **Create a Business Advantage.** Large companies, government entities and foreign concerns are increasingly seeking business partners that have effective corporate policies in place. Having good compliance policies and a reputation as an ethical business will help attract top talent and will make your company more attractive to potential partnerships, contract opportunities, or merger or acquisition consideration.

SEC Fines Ernst & Young for Illegal Lobbying

By **Katie Reardon**

When it comes to lobbying compliance, no company is too big or small to come under scrutiny from a regulatory agency.

Case in point: In July 2014, Ernst & Young reached a settlement with the Securities and Exchange Commission (SEC), agreeing to pay more than \$4 million related to accusations that the audit firm violated independence rules by lobbying on behalf of two clients. According to an [article](#) in *The New York Times*, Ernst & Young “agreed to forfeit \$1.24 million, evidently the money it received for the lobbying, in addition to interest and a penalty of \$2.48 million, adding up to \$4.1 million.”

The case spotlights lobbying activity by Washington Council EY, which became an Ernst & Young subsidiary in 2000. According to SEC investigations, the subsidiary was not performing its duties independently and was involved in lobbying activities for nine years, although no members

of the audit teams were aware of the occurring violations. In 2012, the firm voluntarily stopped performing lobbying work for clients registered with the SEC.

The SEC cited three lobbying efforts on behalf of the first audit client. The first instance states that Ernst & Young “informed the client that a bill was scheduled to be voted on in the House and arranged for a letter supporting the legislation to be delivered to legislative staff members before the vote was taken.” In the second instance, Ernst & Young sent a letter recommending legislation supported by the client to legislative leaders. The third instance was a request for an amendment to pending legislation.

As for the second audit client, the SEC indicated that Ernst & Young met with legislative aides to discuss legislation that, if enacted, would have damaging effects on the client. Ernst & Young proposed alternative language to protect its client’s interests.

PAC Fundraising Checkup

By **Maria J. Armstrong**

Are your disclosures up to date when soliciting PAC contributions? We’ve recently received several questions from our corporate and trade association clients about solicitation notices. To ensure your federal PAC is in compliance when contacting your restricted class, we suggest taking a few minutes to look at your solicitation requests to make sure the following elements are included:

1. IRS notice must go first! “Your contribution is not tax deductible...”

2. Disclose the purpose of the PAC.
3. Advise that contributions are voluntary and that there will be no job reprisals or adverse action based on the amount of the contribution or refusal to contribute.
4. Advise about the requirement to report the name, address and (usually) amount of the contribution.
5. Provide that contributions from foreign nationals are not accepted.

This document has been prepared as a general reference document for informational purposes. The information contained herein is not intended to be and should not be construed as legal advice. Each circumstance should be considered and evaluated separately, and possibly with involvement of legal counsel.

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