



# Rising Challenges

## for Community Banks and Key Tips to Stay Ahead

*Community banks face new hurdles each day. One big new skyscraper of a hurdle, the Dodd Frank Act, has over 3,900 pages of proposed and final rules which, laid end-to-end, would stand nearly three times the height of the Empire State Building.*

**H**ere are the “Top Ten” thoughts on current issues facing community banks.

**1. Understand the Dodd Frank Act.** The Dodd Frank Act (“Act”) will significantly impact 90 percent of outstanding bank charters that qualify as community banks. Even though the Act has been touted as being directed at large financial institutions, it establishes a new regulatory framework for the entire industry. Even institutions not directly regulated by these changes will be pressured to institute “best practices” to respond to these provisions. The Act contains new anti-retaliation protections for employees blowing the whistle on improper conduct. The Securities and Exchange Commission (“SEC”) released the final Act rules on May 25, 2011. The Act establishes a bounty program for whistleblowers: The SEC is required to pay individuals who provide original information to the SEC, when the information results in a monetary sanction exceeding \$1 million. The amount could be from 10 percent to 30 percent of SEC recoveries, some of which have exceeded \$77 million. The Plaintiff’s Bar is already advertising places like “The SEC Whistleblower Center” at [secwhistleblowerclaimscenter.com](http://secwhistleblowerclaimscenter.com).

Introduced on July 11, 2011, legislation known as the Whistleblower Improvement Act would change the Dodd Frank Act to, among other things, encourage employees to make complaints internally so the institution can investigate and address these issues itself. It will be a while before any change occurs.

In the meantime, institutions should: (a) double their efforts to ensure compliance and establish a culture of ethics; (b) review internal compliance programs; (c) remind employees of the internal complaint reporting process; (d) take employee complaints seriously; and (e) train managers about no-retaliation policies and assess who would be the best decision maker in making decisions affecting a complaining employee.

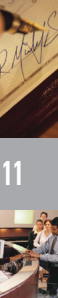
**2. Establish a Social Media Policy.** Employers often review social networking sites for information on potential hires and use that information in making hiring decisions. When you browse a social website, there is a strong risk you will be exposed to too much information. Imagine your search came up with the candidate’s Facebook page, which reveals the candidate’s religion, sexual orientation or a disability. The Equal Employment Opportunity Commission has taken the position that an employer

who knows some fact about an individual that implicates a protected status may be presumed to have considered that fact in the employment decision. This could result in a discrimination lawsuit. So, have a plan on who conducts your Internet searches and how the online information is used. Have someone other than the person making the hiring decision perform the Internet search and screen results so that only relevant information is considered. In addition, do not even think about hacking into a worker’s Facebook account. In the event an employee complains about inappropriate content on a worker’s website, you should ask for a copy and establish a response procedure.

**3. Prevent Wage/Hour Lawsuits.** The Department of Labor handled 32,000 wage and hour complaints last year, up 33 percent from 2009. There is also an increased focus on independent contractor misclassifications. Review your independent contractor relationships before the government does.

**4. Get the New Family Medical Leave Act Poster.** The government has form WH380/381. Put these up and remove the old ones.

**5. The NLRB and Non-Union Businesses.** Even if you are a non-union



shop, the National Labor Relations Board (“NLRB”) will sue you over company policies banning employees from talking about pay or benefits— a “protected concerted activity.”

**6. Performance Reviews: Grade Inflation Hurts.** Accurate performance reviews will “save your bacon” in a lawsuit, but unduly rosy reviews of average workers can hurt. Have Human Resources review performance reviews.

**7. Record-keeping and “Litigation Holds.”** If you think litigation is coming, make sure all standard document destruction policies are suspended. Lost or “unsaved” documents can lead to a presumption against you. Work with your IT department to construct a process to make sure documents are preserved.

**8. What to Do With Charlie Sheen.** We all have seen the implosion of Charlie Sheen. What if you had an employee who engaged in poor or illegal behavior that could embarrass your organization? How should you deal with it? First, work on damage control. Do not spend lots of effort protecting the bad employee, because this links you to the employee’s bad acts. Second, eliminate the employee’s visibility and access to the company’s top people. Consider a paid leave with clear rules about acceptable behavior, setting out clear consequences for violation of the rules. Third,

assess the chances for rehabilitating the employee’s reputation and weigh the value of the employee with the effort required to rehabilitate him or her. In the end, if you are working harder at the employee’s success than the success of the company, it might be time to cut and run.

**9. Watch Out for Retaliation.** Retaliation cases are the most common type of lawsuit now, and the most expensive. “Getting even” will cost you. Consider independent internal reviews of employment decisions affecting complaining employees.

**10. Install a Conflict Resolution Plan.** Companies are avoiding lawsuits by having an established conflict resolution plan that gives the employee an opportunity to vent. Consider establishing one in your workplace. 