

DECISION 2016:

# Is Your Company Ready?



THE 2016 ELECTION SEASON IS FAST APPROACHING. As companies begin to plan their political participation for the coming year, government affairs staff and compliance counsel should closely consider whether there are any vulnerabilities in their organizations' government affairs practices or political activities policies that could lead to unwanted press attention, enforcement actions or both.

Here are the top five issues that most often arise during a typical compliance review—and how we can help you navigate them.

## 1 CAMPAIGN FINANCE

Corporations are prohibited from making contributions, including in-kind contributions, to federal candidates and to candidates in many states. Political action committee (PAC) activity, while generally allowed, remains heavily regulated. When reviewing an organization's corporate political activity and PAC activity, our attorneys may advise on the following:

**SAFEGUARDING PAC FUNDS** | Revise PAC bylaws to include adequate safeguards and internal controls that ensure contributions are not being accepted from foreign nationals and to protect against the embezzlement of funds.

**CANDIDATE APPEARANCES** | Ensure that candidate appearances that are held in corporate facilities, or that utilize corporate resources, take place without making any prohibited contributions to the candidate's campaign.

**EXECUTIVE AND EMPLOYEE POLITICAL ACTIVITIES** | Advise corporations and their executives to ensure that executives who host candidate events, or otherwise support candidates, do so in their personal capacities and not as representatives of the corporation or by using corporate resources.

**COMPLIANT PAC COMMUNICATIONS** | Review PAC websites, solicitations and other materials to ensure that they are free of coercion, contain the necessary disclaimer language and comply with other applicable federal and/or state rules.

**RESTRICTED CLASS COUNSELING** | Evaluate which employees are members of an organization's "restricted class" for PAC solicitation purposes and advise on processes to ensure that those outside the restricted class are not improperly solicited.

**REGISTRATION AND REPORTING RULES** | Advise organizations on the wide range of registration and reporting rules that may apply if they or their PACs plan to support candidates at the state or local levels.

## 2 PAY-TO-PLAY RESTRICTIONS

Pay-to-play laws that restrict contributions from government contractors (and, in some cases, their officers, directors or other employees) often have harsh business and legal consequences. Some states, including New Jersey and Connecticut, continue to actively enforce their pay-to-play laws, and Virginia and Maryland are among the jurisdictions that have added or amended pay-to-play laws recently. We help organizations:

- Understand the current landscape of state and local pay-to-play laws, with a focus on laws that apply to officers, directors or other employees.
- Develop internal policies, controls and communications to ensure compliance with pay-to-play laws in relevant jurisdictions.

## 3 LOBBYING REGISTRATION AND REPORTING

The media continue to show an interest in federal and state lobbying disclosure reports. Several jurisdictions—including New York City and San Francisco—are expanding the scope of activities that trigger registration and reporting requirements. Going into the upcoming legislative season, our attorneys can work with organizations to achieve the following:

- Remain up to date on the latest federal, state and local laws and regulations regarding the activities that are considered lobbying and the expenses, meetings and contributions that must be tracked and reported on periodic lobbying disclosure reports.
- Develop internal processes to ensure that government affairs employees are accurately tracking lobbying activity and that the organization is not improperly understating its lobbying activity or unnecessarily overstating its activity.
- Prepare and file federal, state and local lobbying registration statements and disclosure reports.

## 4 ETHICS: GIFT RESTRICTIONS AND OTHER RULES

Organizations may encounter government ethics rules in a variety of situations, including officeholder visits to corporate facilities, policy conferences that the organization sponsors or the hiring of employees who are leaving government service. Our attorneys review organizations' gift policies, advise on the permissibility of specific gifts to government officials and help organizations understand reporting requirements that might apply when a gift is given to a government official. We regularly provide trainings on these topics for employees, executives and outside consultants. Finally, as talented employees prepare to leave the government and enter the private sector, we can help companies consider the impact of "revolving door" restrictions when hiring new employees out of government agencies.

## 5 VOTER REGISTRATION DRIVES AND GET-OUT-THE-VOTE ACTIVITIES

Helping employees register to vote or encouraging employees, customers or others to vote in an upcoming election is almost always allowed. But such activities can be regulated in unexpected ways—even if done in a nonpartisan manner.

Many states require organizations to register with the state before registering voters. Other states impose campaign finance restrictions on corporate get-out-the-vote activity, including the ability to coordinate such programs with a candidate's campaign, as does the federal government. We advise companies on how they can encourage their employees to participate in the political process without encountering any regulatory traps for the unwary.



*The Perkins Coie Political Law Group advises a diverse group of corporations, trade associations, other nonprofits and individuals on the suite of laws that govern their political activities. The Political Law Group can tailor a review of an organization's compliance policies and other planned political activities based on each client's unique needs. If you have questions concerning any of the topics discussed, or would like additional information on any of these areas, please contact the following members of our Political Law Group:*



**MARC E. ELIAS**

PARTNER | WASHINGTON, D.C.

E: MElias@perkinscoie.com

D: +1.202.434.1609



**REBECCA H. GORDON**

PARTNER | WASHINGTON, D.C.

E: RGordon@perkinscoie.com

D: +1.202.434.1676



**KATE SAWYER KEANE**

PARTNER | WASHINGTON, D.C.

E: KSKeane@perkinscoie.com

D: +1.202.434.1641