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Commercial Dealings with Politicians and Political Groups: *A Guide for Banks and Financial Institutions*

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Election and Political Law

When banks and other financial institutions lend to politicians and political groups, a complex web of federal campaign finance and ethics regulations come into play. While banks are often familiar with the rules that govern their own political and government affairs activities, bank executives and branch managers may be less familiar with the restrictions that apply to commercial dealings with political customers. This client advisory summarizes the major legal traps for the unwary that confront banks doing business with campaigns, political parties, PACs, and other political groups.

Doing Business with Candidates and Political Groups

The Federal Election Campaign Act ("FECA") prohibits corporations, including banks, from making contributions to federal candidates and political committees. In addition, FECA prohibits national banks from making contributions to candidates and political committees at the federal, state, and local levels. These prohibitions introduce day-to-day operational challenges for banks. While banks can, and do, provide loans to candidates, political parties, PACs, Super PACs, and other political groups, they must be careful that such loans do not result in illegal in-kind contributions from the bank to the candidate or political organization. In order to ensure that a loan is not a prohibited "contribution," Federal Election Commission ("FEC") regulations provide that the loan must be made in the "ordinary course of business." It must bear "the usual and customary interest rate" of the lending institution, be made on a basis that "assures repayment" (*e.g.*, be adequately collateralized or secured), be documented in a written instrument, and be subject to a due date or amortization schedule. A below-market interest rate or a loan not secured or collateralized in accordance with FEC regulations, for example, could be treated as an illegal in-kind contribution.

The federal bans on contributions by banks apply not only to loans but to other commercial dealings with candidates and political groups. A political group that sets up a bank account should be subject to the same account terms as a similarly-situated member of the public. Account maintenance fees, for example, should not be waived if they would not be waived for members of the public with similar accounts. Special rules also apply to overdrafts. An overdraft is considered a prohibited contribution unless it is made "on an account that is subject to automatic overdraft protection," is "subject to a definite interest rate that is usual and customary," and has a "definite repayment schedule."

Banks should also be mindful that the terms of their loans to federal political candidates, parties, and political committees are required to be publicly disclosed on reports filed by the political candidates or committees with the FEC. Indeed, when a bank provides a loan to a federal

candidate or political committee, an authorized representative of the bank must sign a "Schedule C-1" and send it to the political committee so that the political committee can file the form with the FEC. Similar reports may be required for loans to state or local candidates or political committees, depending on applicable state or local campaign finance laws. Among other things, this means that the terms of the bank loan will be a matter of public record.

Doing Business with Government Officials

In addition to heightened scrutiny for loans to candidates and political groups, banks should also give special attention to loans and financial products provided to government officials, their family members, and businesses affiliated with them. Often, bank presidents and branch managers may be on friendly terms with elected or appointed government officials. In these situations, the government official might approach the bank executive asking for a personal or business loan. It is critical for the bank to carefully review the proposed loan to ensure that it is adequately secured, that the interest rate is consistent with market rates, and that the official is not otherwise receiving special treatment. If the loan is not on usual and customary terms, the loan might be deemed a prohibited "gift" to the government official in violation of federal, state, or local government ethics laws. The national and local press often scrutinize the terms of such loans and the legal consequences for a bank providing a "sweetheart" loan to a government official are significant. Accordingly, loans to government officials, like loans to candidates and political groups, should be subject to rigorous legal review.

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