

8 Compliance Pitfalls Facing PACs

By Robert Lenhard & Derek Lawlor

October 26, 2015

While Super PACs and so-called dark money groups are the talk of the town, traditional PACs still play an important role in federal campaign finance. Because of that importance, the FEC is also paying close attention to violations by PACs. In fact, the commission recently imposed five-figure penalties against key staff at corporate and trade association PACs.

To help your group avoid a similar fate, we've compiled a list of key compliance issues that anyone overseeing a federal PAC should keep in mind when evaluating their compliance program. Some are the traditional blocking and tackling of PAC compliance and others involve issues that have grown in significance in the past few years.

1. Not screening foreign nationals

Most PAC managers know that only U.S. citizens and green card holders can contribute to federal, state and local races. But this is a growing area of FEC enforcement and presents a special risk as companies increasingly have foreign nationals overseeing some or all of their U.S. operations. For PACs, this can present several compliance issues, which could result in the FEC imposing stiff penalties.

Remember, there's a big difference between lawful permanent resident status and lawfully working in the U.S. Lawful permanent resident is a term of art and doesn't include temporary work visas, even if they allow senior executives to lawfully work in America for years. A PAC needs to know the legal status of those it solicits.

Moreover, the foreign nationals ban includes making a solicitation, as well as accepting a contribution. Routine solicitations during a meeting of senior executives can become difficult if there are foreign executives present. The FEC has given little guidance on the kinds of prophylactic steps that might be taken to ensure compliance, so knowing who's in the room is important.

Be careful if foreign nationals oversee operations that include a PAC. When a foreign executive is promoted to a position that oversees government affairs functions, including the PAC, or when certain PAC officer positions are reserved for individuals holding a corporate title, such as CFO or Secretary, a PAC should consider if it needs to change the chain of command to prevent claims of improper indirect contributions or administrative control of a PAC.

2. Ignoring RFAI letters from the FEC

The Reports Analysis Division (RAD) reviews reports filed with the FEC for errors, omissions, additional clarifications and possible violations. When they spot an issue, they'll send the committee a Request for Additional Information (RFAI) letter. Don't ignore it.

PACs reduce the risk of an audit or referral to the general counsel's office by providing a timely response. As with many FEC filings, a late response to an RFAI has its own negative consequences. RAD offers an [excellent checklist](#) that everyone responsible for reporting should read.

3. Mishandling a discrepancy between the bank balance and reported "cash on hand"

It's not uncommon to find a discrepancy between the amount a PAC reports as cash on hand and what sits in its bank account. Often this is a result of not voiding uncashed checks, a missed deposit when reporting receipts, or missing bank charges. But once the imbalance exists, it remains for all time. How best to handle this depends on the facts, but it's not a problem that gets better with time.

4. Per-cycle audits of financials and compliance

Because PACs operate under a unique set of rules, they can be overlooked in routine internal corporate audit programs. Yet a financial audit of the books and records, and a compliance audit of procedures for fundraising and disbursing funds can provide a useful check on how the PAC is operating. It can also catch problems early, and help ensure that changes to the company's operation or the law are incorporated into PAC practices.

5. Ignoring the FEC's best practices for treasurers

The FEC has significantly increased the amount of how-to information on its website. These guidance documents often show the FEC's priorities for compliance oversight. Here are two key cites. First is [guidance on best practices](#) for financial controls. The second is a [resources page](#) for PAC treasurers. Increasingly, the FEC website is a good first stop for compliance tips.

6. Erroneous deposits in the PAC account

For organizations with a high volume of internal funds transfers, multiple bank accounts, and periodic turnover in accounting department staff, the inadvertent deposit of corporate funds into the PAC, or PAC funds into a corporate account can present a complicated compliance problem. This is made more difficult by business office staff who often view a subsequent offsetting transaction to be the best way to fix such problems. How to solve the problem can vary depending on the facts, but backing out the transfer is often the right step to take.

7. The restricted class means more than FLSA exempt

Federal law allows corporations to solicit PAC contributions from its “executive or administrative personnel,” which is defined by regulation to mean an employee who’s paid on a salaried basis and has “policymaking, managerial, professional, or supervisory responsibilities.”

By regulation, the FEC says that it can turn to the Department of Labor’s definitions for guidance when interpreting what those terms mean, but has consistently stated it’s not bound by the department’s interpretations. Simply viewing the restricted class as those who meet the salary basis test misses the fact that the FEC views the test as more complicated.

8. Cutting corners to save money

Many of the compliance issues listed above become problems because they’re paired with another mistake: not devoting sufficient resources to compliance. Cutting costs for PAC compliance can seem like a smart move, until it isn’t. Relying on one staffer when two are needed, limiting the audit to financial issues rather than including compliance, deciding not to segregate functions related to PAC receipts, relying on off-the-shelf training for PAC ambassadors all seem to make sense until something goes wrong.

While the cost of the clean-up, which can often be an all-hands crisis, is often blamed on a low-level staffer — who subsequently becomes a former employee. But in many cases a fairer reading would be that it was a systems failure resulting from a complacency about compliance. The old adage, a penny wise and a pound foolish, sums up this mistake fairly well.

[Robert Lenhard](#) is a former chairman of the FEC and currently a member of Covington & Burling’s election & political law practice group. [Derek Lawlor](#), a senior associate in the firm’s D.C. office, is also a member of the group.

This article was originally published on <http://www.campaignsandelections.com/>.