



Ethics and Compliance Programs

How to Demonstrate Their Effectiveness

By Alan Greenwood and Steven Lauer

A recurrent task facing Managers of Ethics and Compliance programs is to make sure their programs are effective — and demonstrate this effectiveness to both internal and external audiences.

Since management commitment and support is the fundamental requirement for effective compliance programs, it is essential for ethics and compliance officers (the United States Sentencing Commission used “ethics and compliance” in the changes that it adopted on April 8, 2004, to the Sentencing Guidelines for Organizational Defendants) to successfully demonstrate program effectiveness in order to gain trust and

active support of internal audiences, such as senior management, boards of directors, board committees, internal auditors, legal staff and human resources (See §8B2.1(b)(2)(A)). External audiences, such as regulators and other governmental officials, the investment community and shareholders often evaluate the company based, at least in part, on its ethics and compliance plan.

How does an Ethics and Compliance officer ensure and demonstrate a program’s effectiveness? First, understand the objectives and expectations of each constituency. Then build a program designed to achieve those objectives as well as the company’s business objectives. And finally, understand the specific informational needs of each constituent and ensure they are being met.

INTERNAL CONSTITUENCIES

The needs of the internal

audiences for information about the firm’s ethics and compliance program will vary from company to company to a certain degree, but generally center on program effectiveness. The following are some commonalities about those needs and the necessary data points to address them:

- ***Integration with business processes:*** Management generally wants assurance that the ethics and compliance program is properly integrated with the firm’s business processes. If it is divorced from those business operations, the organization cannot be confident that it truly has embedded a “culture of compliance.” Programs that are not integrated in this manner will not succeed in changing behavior or ensuring an ethical environment for decision-making. For example, if the incentives by which employees are rewarded in the business are antithetical to the behavior

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intended by the ethics and compliance program, the former will succeed at the expense of the latter. This suggests that the effectiveness metrics must reflect the integration of the program with the firm's business processes.

- **Clear written standards and controls:** Managers will want to be sure that the program includes unambiguous standards and clear protocols and controls.

- **Effective training and communication:** One must be prepared to demonstrate that the program has a proactive communication process and, most important, an effective training program that covers all the risk areas within the scope of the organization's operations.

- **Regular monitoring and evaluation:** Critical audiences can be expected to demand evidence that the program has appropriate monitoring measures in place, such as confidential reporting channels and help lines.

Many companies are turning to Web-based compliance training programs to ensure the above needs are met. A recent survey by *Corporate Counsel* magazine concluded that 53% of Fortune 500 companies' law departments have determined to supply compliance-training courses to the companies' employees online.

The United States Sentencing

Commission, when adopting changes to the Guidelines on April 8, 2004, emphasized that effective training is not an optional element of a compliance program; rather, it's a mandatory one: "The organization shall take reasonable steps to communicate periodically and in a practical manner its standards and procedures, and other aspects of the compliance and ethics program ... by conducting effective training programs." (§8B2.1(b)(4)(A)). Other government officials, such as the Inspector General of the United States Department of Health and Human Services, recognize the central place of training in a corporate compliance program: "A critical element of an effective compliance program is a system of effective organization-wide training on compliance standards and procedures. In addition, there should be specific training on identified risk areas, such as claims development and submission, and marketing practices." (Page 8 of Corporate Responsibility and Corporate Compliance: A Resource for Health Care Boards of Directors, a publication of the Office of Inspector General of the United States Department of Health and Human Services, which is posted at <http://oig.hhs.gov/fraud/docs/complianceguidance/040203CorpRespRsceGuide.pdf>.)

A Web-based program can deliver that training in a manner that is consistent and reliable. Other, related material to assist the trainee to assimilate the learning can accompany the core training material. For example, an effective course should allow a client company to link from the course to its policies and other materials on the same subject in addition to providing the trainee the name and contact information for additional questions. Systems that deliver Web-based training courses also provide the company with data on the employees' use of the system. Did they complete the courses required? Did they correctly answer questions based on the material in the courses? The system's ability to track employee usage provides a very compelling record that can demonstrate that the company's training was effectively delivered and retained.

Next month, we discuss External Constituencies — external audiences frequently have a sharper and more focused interest in an organization's compliance program.



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