Essentials of a Successful Compliance Program

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Steve Epstein-Chief Counsel, Ethics & Compliance, The Boeing Company
Debra Sabatini Hennelly-General Counsel & Chief Compliance Officer, Sonneborn
Cathy Hinger-Partner, Womble Carlyle Sandridge & Rice
Michael Levin-Senior Director, Ethics & Business Practices, Freddie Mac
Today’s Goals & Rules of the Road

- Identify essential elements of successful compliance programs
  - What you must have
  - Why you must have these elements
- Describe actionable best practices to strengthen your program
  - Take-aways that you can incorporate into your program next week
- Accomplish a valuable learning experience for 90 minutes
- Rules of the Road
  - Ask questions as they arise
  - Contribute to the wisdom in the room
  - Laugh at our jokes
Outline

• Introduction of panel
• Video (Compliance Challenges)
• Compliance with what?
• Elements of Successful Compliance Programs
  – Leadership
  – Risk assessment and management
  – Controls
  – Communications
  – Monitoring and addressing weakness
• Testing what you learned
• Evaluation
An “Effective” Ethics and Compliance Program is...

... a comprehensive system of policies, processes and procedures designed to prevent – or detect and correct – violations of law (or company policy).
Elements of an “Effective” Ethics and Compliance Program* (a Practical Translation)

• Leaders “promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law”
• Program is overseen by engaged, active leadership (and Board) and provided with sufficient authority and resources
• Risk assessment drives risk-based policies and procedures
• “Effective” training and communication
• “Mechanism” for employees to raise concerns and ask questions without fear of retaliation for doing so
• Monitoring, auditing and investigations
• Corrective and preventive action
• Commitment to “continual improvement”

* Paraphrased from US Federal Sentencing Guidelines for Organizations 18 USC §8B2.1
Risk Assessment and Management: Objectives

• **Enhance the Ethics & Compliance Program to meet internal and external requirements and “best practices”**
  - **Risk Assessment:** Identify and prioritize significant legal and ethical (reputational) risks to the business
  - **Risk Management:** Mitigate the most significant risks first, through implementation of compliance plans
  - Optimize resources: “Can’t boil the ocean”

• **Establish a “continual improvement” approach to risk management, incorporated into operations and culture**
  - Coordinate methodology and scheduling, as appropriate, with existing enterprise risk management processes
  - Synchronize with the company’s business planning/budget cycle
  - Help move the Ethics & Compliance Program from less “Reactive” to more “Proactive”... to “Transformational” (owned/embedded in the business)
Some Key Ethics & Compliance Risk Areas

- Antibribery
- Anti-Money Laundering
- Antitrust/Competition
- Child/Forced Labor
- Conflicts of Interest
- Contacts with Government Agencies & Officials
- Corporate Communications
- Data Privacy
- Employment
- Environmental
- Gifts and Entertainment
- Government Contracting

- Immigration
- Information Security
- Insider Trading
- Intellectual Property
- Occupational Health and Safety
- Product Liability and Stewardship
- Records Management
- Trade controls
- Use and Protection of Company Assets
- Other Industry-Specific Regulatory Areas (Conflict Minerals, FDA, FTC, FAA, etc.)
Risk Assessment and Management ("RA/RM"): Practical Considerations

- **Use a consistent, systematic RA approach across the organization**
  - Risk area questionnaires to identify activities that could create risk
  - Risk-ranking criteria to prioritize (ex: likelihood and potential impacts)

- **Work across “silos” (“you don’t know what you don’t know...”)**
  - Collaborate with other Subject Matter Experts ("SMEs")
  - Include knowledgeable business people in identifying risks

- **Incorporate and address risk-related information from many channels**
  - Helpline and other Investigations, Audits
  - Employee Culture Surveys
  - Business Strategy (M&A, growth plans, new product plans)

- **Drive continual improvement, year-over-year, collectively across the organization**
  - Address the most significant risks first, collaborating to address similar risks
  - Implement corrective/preventive “mitigating” activities—then move down the list to address other risks through the RM process
Risk Assessment and Management Process

- Internal and External Requirements by Risk Area
- Identify Potential Risks
- Prioritize Potential Risks
- Create Compliance Management Plan(s)
- Implement Plan(s)
- Discuss among E&C, Legal, other SMEs, Business Colleagues
- Create Mitigation Strategies for most significant risks first
- Revise Code or Policies?

“RA”
“RM”

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What Might “Successful” RA/RM Look Like?

• **Near term** ➔ Discussions driven by risk area questionnaires among E&C, Legal, other SMEs, Business representatives
  - Not an audit, but a conversation among colleagues
  - Establish trust to inspire candor
  - Exploit teachable moments
  - Engage business champions to own risk mitigation strategies in the business
  - An early “win” is key to buy-in, driving sustainability of the risk assessment and management process
    • A pilot in one business unit or division
    • Address a few key risk areas across a few divisions/business units
    • A few risk areas across the whole enterprise

• **Long term** ➔ Integration of Ethics and Compliance Risk Management into the business strategy, planning, operations and culture
Controls

• Guidance (policies, procedures, code of conduct)
  – Readily available
    • On line
    • Easy to find
    • Hard copy
  – Apps???
Controls

• **Financial controls**
  – Major risk areas
    • Travel and expense
      – Executive Assistant at HP embezzles $1M over 4 years
    • Business courtesies
    • Corporate grants
      – Independent approval
      – Stepped approval process commensurate with risk

• **Transparency**
  – Audits
    • Internal and external
  – Self-assessments
Leadership and Culture

• From the USSGs, an effective Ethics & Compliance Program must include: “...promotion of an organizational culture that encourages ethical conduct and a commitment to compliance...”

• What kind of “Leadership” is required to create, promote and sustain that kind of culture?
  – Individual?
  – Departmental?
  – Organizational?
Leading and Driving Change

“Leaders—especially those who are change agents—can only succeed when they have a reservoir of goodwill that allows them to convince followers that their fates are correlated.”

- Warren Bennis (1925-2014)

Distinguished professor and author, widely considered the “father” of the field of Leadership studies

• Are you a change agent?
• Have you cultivated that kind of “goodwill” in your organization?
• Can you convince your colleagues that building and sustaining an effective Ethics & Compliance Program (your “fate”/success) is connected to their “fate”/success and to the organization’s long-term best interest?
Individual and Departmental Leadership

• Individual
  – Do you consider yourself a leader? Do you think about how well you lead?
  – Are you a role model for ethical decision-making and behavior? Would your colleagues say that you are? Do you have the courage to “speak up” if necessary, even if it means challenging the status quo?
  – Are you an effective “business partner” in your organization? Are you “fluent” in the organization’s Mission, Vision and (short- and long-term) Strategy? Do you know its key competitors and their compliance profiles?
  – Can you “sell” the value of the Ethics & Compliance Program? Beyond just avoiding fines and penalties? Can you convince your colleagues that “your fates are correlated”…?

• Departmental
  – Do you manage others? Do they know how to be effective “business partners” in the organization? Are you cultivating ethical leaders?
  – Are you effectively leading your team to drive the Program’s goals and objectives? Are you providing the support and resources they need to achieve them?
Organizational Leadership

- Does your Ethics and Compliance Program have visible, tangible, ongoing support from senior and middle-management? (“Tone from the Top,” “Tone in the Middle”)?
- Do you know whom you need to engage for support? Do you have the “access” you need to get that support?
- Who is/are your champion(s)? Do they have the tools they need to help you gain “buy-in” from their peers and their teams?
- Do you use an employee culture survey (or add questions to HR’s employee engagement survey) to measure perceptions about:
  - Ethical leadership and behavior?
  - The organization’s support for the Ethics & Compliance Program?
  - Whether managers encourage employees to raise issues, questions and concerns? Or whether employees fear retaliation for doing so?
- Does the organization’s performance management system incorporate metrics tied to the organization’s Values? Are leaders accountable for ensuring that the Compliance Program is followed by their teams?
Communications

Why Communicate?

• USSG: Org shall “communicate periodically and in a practical manner”
• Because Employees can’t meet expectations that aren’t clearly set

What?

• Standards & Procedures
• Other aspects of the compliance and ethics program

How?

• Effective training programs
• Otherwise disseminating information appropriate to roles and responsibilities

To Whom?

• Organization’s governing authority, high-level personnel, substantial authority personnel, employees, and agents (as appropriate)
Communications

What does Mad Men have to do with C&E Programs?

C&E officers must channel their inner Ad Exec.

- Know our customers
- Tailor our messaging
- One size does not fit all
  - “…appropriate to roles and responsibilities”
- Use multiple formats and media
- Take the VP of Internal Communications out for three martini lunches!

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Communications

What does a sine wave have to do with C&E Programs?

![Graph showing employee awareness over time](image-url)
Communications

What vehicles should you employ?

- Policies & Procedures
- Live Training/Discussions
- Web-based Training
- New Employee Orientation
- Posters/Brochures
- Blogs
- Video Messages/LCD Screens
- Newsletters
- Articles
- Quick Reference Charts
- Web pages
- FAQs
- Laptop stickers
- Wallet cards
- Magnets, Mouse pads, Note pads/Post-Its, Stress Balls
- Third Party Messaging
- Whistleblower program
Episode V: The Empire Kicks Back

Contingent Worker Operations notified Ethics that a staffing vendor claimed to have been approached by a Freddie Mac director with an unsavory request. The Freddie Mac Director was said to have offered to hire several candidates from the staffing vendor’s subcontractor, Empire Consulting Inc., but only if the vendor would share Freddie Mac’s fee.

The alleged proposal went like this: In return for the business, the Director demanded that the staffing vendor pay the Director half of the difference between the rate the vendor charged Freddie Mac and the rate the vendor actually paid the successful candidates. If true, the alleged behavior would amount to an unlawful kickback.

The Investigation

The Ethics Office conducted an investigation, speaking with witnesses, reviewing emails, and examining procurement records. During its review, Ethics discovered evidence (including emails from vendors mailed to the Director’s home address) that suggested the Director herself owned Empire Consulting, which acted as a subcontractor to provide staffing resources to private staffing vendors with which Freddie Mac did business.

Ethics also discovered emails between the Director and a Manager of Records, which indicated that the Director asked the Manager to help falsify the salary of an employee. The employee’s income was not consistent with his duties, and the investigation revealed that the Director was one of Freddie Mac’s senior executives.

The Outcome

Based on the evidence and the employees’ own admissions, the Ethics Office determined that the Director and Manager had engaged in self-dealing and had attempted to extort kickbacks from vendors. Management, in consultation with HR, terminated their employment immediately.

Accountability is Everyone’s Responsibility

Each employee is personally responsible for maintaining Freddie Mac’s ethical culture. An important part of fostering that ethical culture is speaking up when there is questionable conduct—when employees aren’t following the Codes of Conduct and related policies, when employees or managers aren’t treating others fairly, or when employees are suffering retaliation for raising issues. Freddie Mac does not tolerate retaliation and protects employees who, in good faith, report issues and ask questions.

If you witness behavior that doesn’t seem to follow the expectations of the Codes of Conduct, you have options. You may discuss the issue with your manager or another manager in your division. You may also call the Ethics Office.

You can also choose to make a report directly to the Ethics Office. If you prefer to remain anonymous, you can contact the Ethics Helpline at 877-301-CODE (2635) or on the web at www.freddiemac ethics helpline.com.

The Policies

The policies at issue in this episode include:

- Outside Activities and Family Member Activities (Policy 5203)
- Outside Activities in General
- Code Of Conduct (Policy 1-110)
- Self-Dealing and Corporate Opportunities
- Investigations Policy for Complaints (Policy 1-450)
- Roles and Responsibilities

No Retaliation!

Freddie Mac is committed to maintaining a work environment where employees can ask questions, voice concerns, and make appropriate suggestions without fear of retaliation.

Freddie Mac will not tolerate retaliation against any individual who, based on his or her reasonable good faith belief, reports a concern about potential illegal or unethical conduct or a violation of Freddie Mac policies or who assists in the resolution of an investigation or proceeding.

If you think you’re being adversely treated for reporting an issue, contact Ethics!
Monitoring and Addressing Weakness

• **Test controls**
  – Audits
  – Self-assessments
  – Independent audits

• **Measure effectiveness of your communications**
  – Tracking hits on on-line sites

• **Employee surveys**

• **Focus groups**

• **Analysis of cases**
  – Ethics line
  – Investigations
  – Queries to ethics advisors, law department, managers
Monitoring and Addressing Weakness

• **Benchmark**
  – Internal
    • Past performance
  – External
    • Peer companies
    • ACC studies
    • Ethics Research Center surveys (NBES)
    • Corporate Executive Board studies

• **Changes to environment**
  – Mergers and acquisitions (change to business)
  – New regulations
  – Conducting business in new jurisdictions
  – Improved best practices (Keeping up with your peers)
Monitoring and Addressing Weaknesses

• **Warning!**
  – Once you develop the metrics and data, you must address *known weaknesses*
    • Failure to address weakness becomes evidence that you were aware of problems but did not take effective remedial action
Defending Your Compliance Program

• **Trends:**
  
  – *Enforcement resulting from failed compliance programs*
    
    • FCPA and international anti-corruption laws
  
  – *Deferred Prosecution Agreements (DPAs)*
    
    • Compliance programs with oversight, monitoring and reporting
    
    • DPAs may ease the threat of convictions, but still harm reputations, complicate resolution of collateral civil disputes, typically come with a heavy price tag, ongoing oversight continues government scrutiny
    
    • Ease prosecutors’ burden of proof – you may never know what they have on your client if DPA precedes evidentiary disclosures
    
    • Expense/burden of compliance with DPA compliance program
Defending Your Compliance Program

Federal Sentencing Guidelines 18 USC § 8(B)2.1: Express consideration of compliance programs in culpability scores

1. Exercise due diligence to prevent/detect criminal conduct + organizational culture of ethics and compliance
2. Leadership knowledgeable of compliance and ethics program and implement effective oversight; delegation of day to day oversight to specific professionals
3. No criminals or bad actors in oversight/implementation positions
4. Effective communication and training on compliance and ethics
5. Monitoring effectiveness of program
6. Provide employees reporting structure without fear of retaliation
7. Consistent promotion, implementation and enforcement of program
8. Appropriate discipline for those found to have violated policies or laws
9. Upon discovery of criminal activity, take action to prevent/cure
10. Risk assessment + mitigation of risks identified in risk assessment
Defending Your Compliance Program

DOJ/SEC 2012 Resource Guide To The FCPA: *Hallmarks Of Effective Compliance Programs*

1. Commitment from Leadership / Clearly Articulated Policy Against Corruption
2. Code of Conduct and Compliance Policies and Procedures
3. Oversight, Autonomy, and Resources
4. Risk Assessment
5. Training and Continuing Advice
6. Incentives and Disciplinary Measures
7. Third Party Due Diligence and Payments
8. Confidential Reporting and Internal Investigation
9. Continuous Improvement: Periodic Testing and Review
10. Mergers and Acquisitions: Pre-Acquisition Due Diligence and Post-Acquisition Integration
Defending Your Compliance Program

• Avoiding enforcement:
  – Prepare for the worst – do you have a government investigation response plan?
  – Track enforcing agencies’ expectations
  – Industry sweep enforcements
  – Negotiated voluntary disclosures