

Compliance: Missed Connections



Overview

I. Compliance Background

II. Elements of an Effective Compliance Program

- Session will cover FSG compliance program elements
- Suggestions for small institutions and those with limited resources

III. Tool Kit

- Handout CD ROM with practical compliance tools

IV. Reference Materials

- Will provide citations to additional sources of assistance



I. Compliance Background



What is Compliance?

Compliance is a comprehensive program that helps institutions and their employees conduct operations and activities ethically; with the highest level of integrity, and in compliance with legal and regulatory requirements.



Why Have Organizational Compliance and ERM programs?

- ***Compliance Programs***
 - Fiduciary Responsibility
 - Federal Financial Reporting and Internal Control Standards
 - Legal and Regulatory requirements and organizational policies
- ***Enterprise Risk Management Programs***
 - Standard & Poor's- Credit Ratings

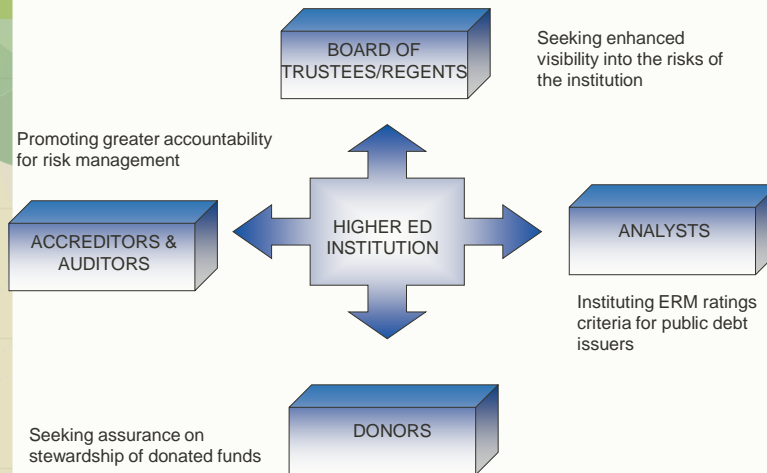


Business Reasons For Developing Compliance Programs

- Foster a culture of ethics and compliance that is central to all of the institution's operations and activities.
- Understand the nature of risks and potential exposures.
- Identify and manage risks that impact the institution's reputation.
- Integrate the compliance program into ERM Framework



Why Are Compliance Programs Important?



Factors Affecting Organizational Context for Compliance

- Board and Audit Committee
 - Independent and engaged?
- Management's Philosophy and Operating Style
 - Communicates by word and action there is support for compliance and commitment to ethics
 - Code of Conduct
 - HR Practices and Policies: Recruitment and hiring; orientation; evaluation, promotion and compensation; disciplinary actions
- Organizational Structure
 - Centralized vs. Decentralized
 - Assignment of Authority and Responsibility
- Risk Culture (Appetite and Tolerance)

Smaller Organizations

[M]ay meet the requirements of this guideline with less formality and fewer resources than would be expected of large organizations. In appropriate circumstances, reliance on existing resources and simple systems can demonstrate a degree of commitment that, for a large organization, would only be demonstrated through more formally planned and implemented systems.

Federal Sentencing Guidelines Manual
Effective Compliance Programs
Guidelines Commentary



Smaller Organizations, Cont'd

[M]ay meet the requirements of this guideline [by] . . . modeling its own compliance and ethics program on existing, well-regarded compliance and ethics programs and best practices of other similar organizations.

Federal Sentencing Guidelines Manual
Effective Compliance Programs Guidelines
Commentary



Practical Tools and References to Supplement Your Program

Compliance Background




Associations with Reference Materials

- NACUA: <http://www.nacua.org/>
- Society for Corporate Compliance and Ethics
<http://www.corporatecompliance.org>
- Association of Corporate Counsel:
<http://www.acc.com/>
- ECOA : <http://www.theecoa.org>
- NACUBO: <http://www.nacubo.org/>


Publications

- Ethikos Magazine:
<http://www.singerpubs.com/ethikos/>
- Ethisphere Magazine:
<http://ethisphere.com/?gclid=CMbC7siNtZ0CFdVL5QodnytqiQ>





II. Elements of an Effective Compliance Program



To have an effective compliance program, an organization must establish and maintain an organizational culture that “encourages ethical conduct and a commitment to compliance with the law.”

U.S. Federal Sentencing Guidelines
§8B2.1(a)(2)



Eight Elements of an Effective Compliance Program:


1. High level company personnel who exercise effective oversight and have direct reporting authority to the governing body or appropriate subgroup (e.g. Audit Committee);
2. Written policies and procedures;
3. Training and education
4. Lines of communication



Eight Elements of an Effective Compliance Program, Cont'd

5. Standards enforced through well-publicized disciplinary guidelines
6. Internal compliance monitoring
7. Response to detected offenses (including remediation of harm caused by criminal conduct) and corrective action plans (including assessment and modification of the compliance and ethics program); and
8. Periodic Risk Assessments





Practical Tools and References to Supplement Your Program

- - -

Elements of an Effective Compliance Program



Toolkit:

- Federal Sentencing Guidelines for Organizations
- Federal Sentencing Guidelines Manual
- Federal Sentencing Guidelines Advisory Committee Report
- 2010 FSG Amendments

HHS Office of Inspector General References:
<http://oig.hhs.gov/fraud/complianceguidance.asp>



Suggested Readings on Ethics

- Paine, Lynn Sharpe: Managing for Organizational Integrity, Harvard Business Review (March-April 1994)
- Weaver, Trevino, Compliance and Values Oriented Ethics Programs: Influences on Employees' Attitudes and Behavior, Business Ethics Quarterly (April 1999)
- Joseph, Integrating Ethics and Compliance Programs: Next Steps for Successful Implementation and Change, Ethics Resource Center (2001)
- Ethics Resource Center, Leading Corporate Integrity: Defining the Role of the Chief Ethics & Compliance Officer (CECO), (2008)
- Tyler, Dienhart, Thomas, The Ethical Commitment to Compliance: Building Value-based Cultures That Encourage Ethical Conduct and a Commitment to Compliance, California Management Review (February 2008)
- Roach, Davis, Establishing a Culture of Ethics and Integrity in Government, Ethikos (September-October 2007)(Toolkit)



High Level Personnel



Day to Day Responsibility

- May be a Chief Compliance Officer (GC, IA, or Independent) and /or Compliance Committee;
- Must have overall responsibility for day to day operations of the compliance program;
- Must have prompt access to the Board to report instances of criminal conduct;
- Must report annually to the Board on compliance and ethics program;
- Must have access to effective high level management and executive oversight



The Organization's Governing Body Should:

- Be knowledgeable about the program;
- Exercise effective and ongoing oversight;
- Promote the program.

(See, e.g., In re: Caremark and Stone v. Ritter.)



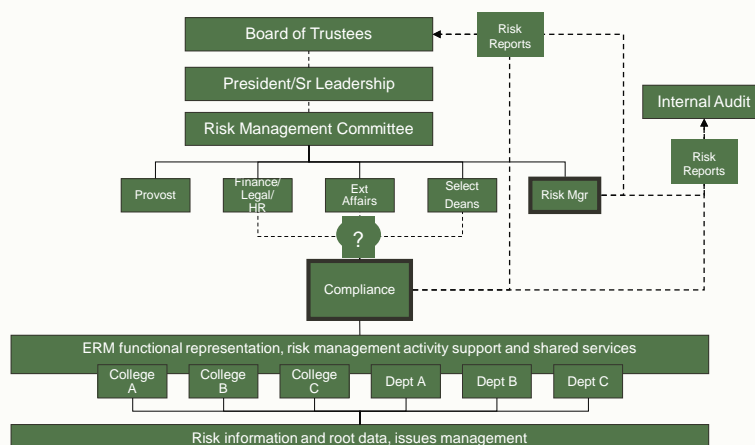
Smaller Organizations


“Examples of the informality and use of fewer resources with which a small organization may meet the requirements of this guideline include ... using available personnel, rather than employing separate staff, to carry out the compliance and ethics program.”

Federal Sentencing Guidelines Manual
Effective Compliance Programs
Guidelines Commentary



Developing the Team/Structure





Practical Tools and References to Supplement Your Program

High Level Personnel



Tool Kit:

- Chief Compliance Officer Job Description
- Office of Compliance Mission Statement
- Compliance Officers Working Group Charter
- Compliance Steering Committee Charter
- Audit and Compliance Committee Charter;
- Audit and Compliance Committee Calendar
- Sample SOX gap analysis form.

Reference Materials:

Ethics Resource Center, *Leading Corporate Integrity: Defining the Role of the Chief Ethics and Compliance Officer*, <http://www.ethics.org/> (Great free download)





Periodic Risk Assessments



Periodic Risk Assessments

- Efficiency: risk assessments allow you to maximize the utility of scarce resources by directing them to the most significant compliance issues faced by your institution.
- “Buy-in” and Ownership: when individuals who have day to day administrative responsibilities participate in identifying compliance risks and developing mitigation plans they are more likely to actively participate in the compliance process.
- Coordination: most compliance risks have potential significance across multiple functions, so risk management encourages coordination and consensus building, particularly in organizations with distributed/decentralized management.



Periodic Risk Assessments, Cont'd

- Keep the risk management process simple.
 - Build into existing business processes
 - Complex processes feel like red tape
- Start small and build over time.
 - Don't overload administrators with too many projects
 - Additional projects and processes can be added over time

“Don't let the perfect be the enemy of the good.”



Periodic Risk Assessments

*Conducting a Compliance
Risk Analysis*



Compliance Risk Analysis

1. Organizational Context: What are your organization's objectives, structure and operations?
2. Risk Identification: What are the possible risk events your organization faces?
3. Risk Assessment:
 - What is the likelihood of the risk event happening?
 - What is the potential impact of the risk event?
4. Risk Evaluation- Having assessed the risks:
 - What is your organizations "appetite" for risk?
 - What are the most important risks to address?



Compliance Risk Analysis, Cont'd

5. Risk Treatment: What steps must be taken to mitigate the risks Identified?
6. Monitoring, Review and Corrective Action,
 - Are internal controls working effectively to mitigate risk?
 - Is there any corrective action needed?
7. Communication: Throughout the Organization



Risk Identification

- **Process Flow Analysis**
 - Regulatory analysis
 - Responsible Officers
- **Event Inventories**
 - Organizational History
 - External Context (Stakeholder expectations)
 - Events Common to Industry
- **Interviews, Questionnaires, Surveys**
- **Facilitated Workshops**
- **Leading events and escalation triggers**



Risk Assessment

- **Inherent Risk**
 - Strategic
 - Operational
 - Financial
 - Compliance
 - Reputational
- **Residual Risk**
 - Risk after accounting for current internal controls



Risk Evaluation

- Having assessed the risks:
 - What is your organizations “appetite” for risk?
 - What are the most important risks to address?



Risk Response

- Avoidance
- Reduction/Mitigation (Internal Controls)
- Sharing (e.g. Insurance)
- Acceptance
 - Crisis Management Plans
 - Business Continuity Plans
 - Other Operational Plans
 - Development of new policies/procedures



Internal Controls

- Organizational/Process Controls (i.e. separation of duties)
- Documentation - written policies and procedures
- Training
- Audit Reports
- Security and Integrity



Practical Tools to Support Your Program

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Risk Management



Tactical Process Overview

- Risk Assessment
- Risk Identification
- Risk Analysis
- Risk Evaluation
- Risk Treatment
- Risk Communication, Monitoring & Review



Risk Identification

- Initial interview/survey with Risk Owner
 - Risk Assessment Survey (i.e. Survey Monkey)
- What issues/areas of concern that keep them up at night?
- What is the probability of occurrence?
- Risk owner impression of impact level
- Create a risk registry

Person Interviewed	Risk Owner	Department	Area of Concern	Issues	Affect On Other Departments	Probability of Occurrence H = >70% M = 30-70% L = <30%	Impact



Risk Analysis/Evaluation

- For the high probability and high impact risks, do a detailed analysis on the impact or consequences of the risks.
 - Legal/Compliance
 - Health & Safety
 - Reputation
 - Operational
 - Social/Behavioral
 - Physical Environment
 - Financial
- Rate the impact of each risk using a defined scale.



Distill Registry to Top 5 Risks

Identify Top 5 Risks	Type of Risk (i.e., Strategic, Operational, Financial, Compliance, Reputational)	Assess (Severity and Probability)	Evaluate/ Prioritize	Mitigate / (Internal Control)	Monitor and Update the Plan



Sample Risk Project Form

- Each risk owner creates a project plan with timelines for mitigating risks.
- Risk owner provides semi-annual progress updates on risk mitigation projects.
- Communicate progress to the Audit Committee of the Board of Trustees.

1. General Project Information	
Project Title:	
Project Sponsor/Department:	
Project Summary:	

2. Project Update	
Current Status	List completed action items and project successes thus far.
Remaining Tasks	List the remaining tasks/action items which are needed for the successful completion of the project.

Compliance Communications

Compliance Communications

More Elements:

- Written Policies and Procedures
- Training and Education
- Lines of Communication
 - *Hotlines and Whistleblowers*
- Standards enforced through well-publicized disciplinary guidelines
 - *Codes of Conduct*



Written Policies and Procedures

- Explain legal requirements so that employees understand their obligations and how to conform their behavior to meet them;
- Encourage managers and employees to report suspected fraud and other improprieties without fear of retaliation, and
- Should be made easily available (e.g. policy webpage)



Training and Education

- Reasonable and practical steps must be taken to disseminate information about the organization's compliance program and its policies and processes.
- Training should be provided to the governing body, high level executives, employees and, where appropriate, the organization's agents. (May be required by law, e.g. Medicaid, Human Subjects Research).



Smaller Organizations

“Examples of the informality and use of fewer resources with which a small organization may meet the requirements of this guideline include . . . training employees through informal staff meetings.”

Federal Sentencing Guidelines Manual
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Lines of Communication

- The FSG state that to enhance the effectiveness of the compliance program, the program must establish lines of communication whereby:
 - Employees and agents may seek guidance and report concerns, including the opportunity to report anonymously
 - There are assurances that there will be no retaliation for good faith reporting;
 - Sometimes required by statute, e.g. Medicare/Medicaid.



Publicized Standards and Discipline

- **The Code of Ethical Conduct** is the centerpiece of an effective compliance program
- Topics and Organization:
 - Leadership Statement
 - Inspirational provisions such as mission statement, guiding ethical principles, values statement
 - Explains who is covered
 - **Standards of conduct**
 - **Discipline and enforcement**
 - Reporting (obligations), whistleblower, non-retaliation



Publicized Standards and Discipline, Cont'd

- Code of Ethical Conduct Style:
 - Audience/Culture
 - Q and As and Resources
 - Acknowledgment of Receipt?
 - Publicly available?



Practical Tools to Support Your Program

- - -

Compliance Communication



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What is the Office of Compliance and Risk Management?
 An Office of Compliance and Risk Management is an enterprise-wide program designed to coordinate, manage, monitor, control and report on risks associated with regulatory compliance.

Seton Hall University Office of Compliance and Risk Management Mission:
 The Office of Compliance and Risk Management is dedicated to fostering the mission of Seton Hall University while ensuring compliance with all applicable federal and state laws, regulations, and university policies. Consistent with this mission is to maintain integrity and to adhere to the highest standards of virtuous conduct.

The Office of Compliance and Risk Management at Seton Hall University was

designed to safeguard the university's interests and to identify areas of risk and potential liability on a university-wide level. The program is intended to minimize or eliminate risks by:

- Ensuring the institutional perspective and mission is always present.
- Complying with both the letter and spirit of law, the rules, regulations and university policies in achieving institutional compliance.
- Providing education, training and guidance to all employees and faculty to meet increasingly complex regulatory requirements under the law.
- Conducting Risk Management Assessment and Insurance Management.
- Monitoring and managing the university's financial health and solvency.
- Enforcing the University Policy Against Sexual Harassment.
- Enforcing the University Policy Against Academic Dishonesty.
- Working collaboratively with other departments on the Risk Management Committee to identify, address and to minimize risk.
- Reporting on the development of the University's Critical Incident Management Plan.
- Developing institutional policies the way in which we live our practices.
- Providing Contract Review and Procedures.
- Reporting in compliance with Environmental Health and Safety and Laboratory Safety.
- Change of University Ownership Program.
- Providing an additional mechanism for reporting allegations of misconduct through our partnership with Ethics.

From an organizational standpoint, the Office of Compliance and Risk Management reports directly to the Office of the Executive Vice President for Administration. The Compliance Officer reports the Executive Council in supporting and enforcing several university programs and activities.

In today's world of increasing governmental regulation involving research, data, information technology, human resources, emergency preparedness, safety, privacy rights and environmental issues an institutional compliance program is a reality. Integration with higher education standards is a reality. Our compliance program provides governance as to how ethical conduct and integrity should be promoted within the university community.

Colleges and Universities have a diverse and complex array of resources for which they manage, risk control and the financing involves additional challenges. Such

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Colleges and Universities have a diverse and complex array of resources for which they manage, risk control and the financing involves additional challenges. Such

Tool Kit

- Communication Plan
- Policy on University Policy Development
- Compliance Complaint Policy

References

- **Policies:** <http://www.acupa.org/resources.html>

- **Training:**

A good website for film clips, cartoons and good training ideas, as well as regular compliance updates:

<http://www.compliancebuilding.com/>

- **Codes of Conduct:**

Ethisphere Magazine for Codes of Ethical Conduct

<http://ethisphere.com/?gclid=CMbC7siNtZ0CFdVL5QodnytqiQ>



Monitoring & Review



Monitoring & Review

- The organization shall take reasonable steps, including **monitoring and auditing**, to:
 - Ensure that the organization's compliance and ethics program is followed;
 - Periodically evaluate the effectiveness of the organization's compliance program.



Monitoring & Review

- Routine monitoring of actual performance vs. expected performance
- Review and periodic investigation of the current situation
- Internal monitoring and assurance processes should be ongoing



Monitoring & Review

- What should be monitored?
 - The risks and context– are things changing?
 - Effectiveness / appropriateness of the strategies and management systems
 - Risk Management plan and system as a whole
- Types of Monitoring
 - Line management reviews of risks and their treatments
 - Internal auditing
 - External auditing



Smaller Organizations

“Examples of the informality and use of fewer resources with which a small organization may meet the requirements of this guideline include . . . monitoring through regular ‘walk-arounds’ or continuous observation while managing the organization.”

Federal Sentencing Guidelines Manual
Effective Compliance Programs Guidelines
Commentary



Response to Monitoring

- After monitoring and auditing of the compliance program, the organization shall take reasonable steps to:
 - Respond appropriately to any violations of the law or policies to prevent future misconduct;
 - Modify and improve the organization's compliance and ethics program.
 - Make restitution when appropriate if criminal conduct is found

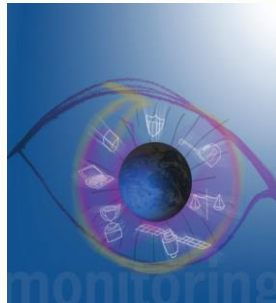



Compliance Monitoring

References:


COSO Monitoring

http://www.coso.org/documents/COSO_Guidance_On_Monitoring_Intro_online1.pdf





How Smaller Institutions Can Build Effective Compliance Programs



How Smaller Institutions Can Build Effective Compliance Programs

- You must have buy in from the top
- Establish Compliance/ERM as a component of institutional strategic plan
- Vetted and accepted by Board of Regents/Trustees and Executive Cabinet
- Establish risk ownership and management of risk



Develop a Compliance Program Model

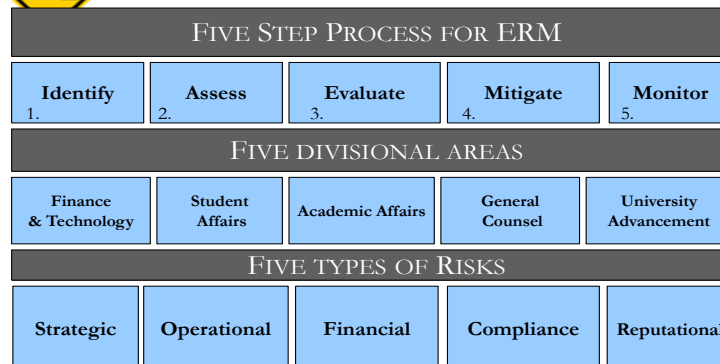
- REGULATORY STANDARDS:
 - Federal Sentencing Guidelines - Section 8B2.1(b)(7)(A)
- GUIDELINES & BEST PRACTICES:
 - Committee of Sponsoring Organizations of the Treadway Commission's (COSO) ERM Framework
 - Standard & Poor's (S&P) ERM Ratings Criteria for Non-Financial Organizations
 - ISO31000
- EMERGING REGULATIONS & GUIDELINES:
 - Accreditation requirements



Seton Hall University's Proposed ERM And Compliance Model



SETON HALL'S ERM AND COMPLIANCE MODEL



1



Develop An Institutional Compliance Calendar

- Create universal template
- Divisions input statutes and regulatory compliance
- University wide inventory of dates for compliance



Seton Hall University Compliance Calendar Template

Division of Student Affairs
Enterprise Risk Management Plan
Compliance Calendar

GOVERNING AUTHORITY:
REGULATION/LAW/STATUTE:
DEPARTMENT:
DIRECTOR:
DATE:

ACTION STEPS TO COMPLIANCE

Steps/Description	Responsibility	Completion Date



TCS Education System Compliance Calendar Template

Standard	Requirement	Responsible Office	Deadline	Status
<i>FIRST QUARTER</i>				
<i>Higher Ed</i>				
<i>Corporate & Business Operations</i>				
<i>Tax</i>				
<i>Employment</i>				
<i>Financial/Audit</i>				
<i>Information Privacy & Security</i>				
<i>Other</i>				



Questions?

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