

# Compliance and Ethics Programs

By Andrea Falcione and Kirsten Marcum

## Eight tips for proper board oversight



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**W**hat should boards and senior management look for in a compliance and ethics program? How can they adequately assess their companies' efforts?

The following eight tips will help you evaluate whether your company has the world-class

ethics and compliance program that it both needs and deserves and are based on 13 years of experience designing and deploying such programs.

All boards of directors should require their companies to establish and maintain compliance and ethics programs that, at a minimum, meet the criteria set forth in the U.S. Federal Sentencing Guidelines for Organizations (Sentencing Guidelines), as described in our tips below:

### 1. Compliance Standards and Procedures

Appropriate standards and procedures are the foundation of any compliance and ethics program. Your company must adopt standards and procedures to prevent and detect criminal conduct. The board should be sure that the organization's compliance- and ethics-

related policies and procedures have substance, have depth and are easily understood by the average employee.

### 2. Designated High-Level Compliance Personnel

The Sentencing Guidelines require that boards of directors exercise reasonable oversight of their companies' compliance and ethics programs. Directors should understand both the risks facing the organization and the compliance and ethics activities designed to address those risks. Boards should schedule regular and substantive compliance and ethics briefings by appropriate members of senior management.

In addition, the structure of your company's compliance and ethics department is crucial. A member of high-level personnel—such as a chief compliance or chief ethics officer—must be charged with overall responsibility for your organization's program. Your chief compliance officer must have access to both senior management and the board of directors for maximum efficiency and effectiveness.

As a director, you should insist upon adequate resources for the program. In the event of a catastrophic compliance or ethics failure, the government *will* assess whether the company's compliance efforts are genuine or whether they evidence merely a "paper program."

### 3. Personnel Screening Related to Program Goals

To meet the Sentencing Guidelines' standards, your company's general

hiring and promotion practices must incorporate compliance- and ethics-related candidate due diligence. That due diligence should include appropriate reference and background checks, within the scope of the law. The board of directors should require the company to promote both ethical conduct and a commitment to compliance with the law when making hiring and promotion decisions.

### 4. Training and Communication

Training and communication are two of the most critical aspects of an effective compliance and ethics program. Compliance and ethics education must be required organization-wide—from the board to employees to agents (as appropriate). As a director, you should ensure that compliance and ethics education and communications are ongoing, updated and appropriate to each group's roles and responsibilities at the company.

### 5. Monitoring and Auditing

All organizations—public and private, for-profit and non-profit—should establish auditing and monitoring systems to detect criminal conduct. Boards should insist that their companies institute and publicize a system for employees and agents to report or seek guidance about actual or potential criminal conduct.

A compliance hotline phone system and/or a web-based ethics helpline is an important foundation of any effective compliance and ethics program. As a

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director, you should demand that your company's reporting system allow for anonymity or confidentiality, where permissible by law. In addition, you should compel the organization to enforce a policy prohibiting retaliation against individuals who report issues in good faith.

Any compliance and ethics program worth its salt should be subject to separate audits by independent internal or external experts. The board of directors should require periodic evaluations of the program's effectiveness.

## 6. Incentives and Discipline

Your organization must enforce its compliance standards appropriately and consistently and should employ incentives to promote proper conduct and deter misconduct. Directors should require effective incentive and

disciplinary practices and procedures organization-wide.

## 7. Remedial Actions and Periodic Program Modifications

An effective compliance and ethics program requires reasonable, responsive, appropriate and well-designed reactions to criminal conduct. As a director, you should demand prompt, proper response to any and all criminal conduct at the organization, and the company must modify its compliance and ethics program accordingly.

## 8. Periodic Risk Assessments

In accordance with the Sentencing Guidelines, the board should require periodic and substantive assessments of compliance and ethics risk. Risk assessments must include thorough analysis and appropriate remedial

action. For instance, directors should oblige the company to reprioritize any identified risks and to alter the compliance and ethics program as appropriate.

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