

RESOURCE 1: GOVERNANCE AND ORGANIZATION

Governance structures are evaluated by prosecutors, suspension and debarment officials, regulators, and prime contractors. An effective ethics and compliance program is evaluated not solely by the absence of misconduct, but by whether the organization took reasonable, good-faith, and proactive steps to prevent, detect, and respond to misconduct. Enforcement authorities assess governance structures as a threshold indicator of whether a program can function in practice, with expectations scaled to the company's size, resources, and risk profile.

When designing an ethics and compliance program for a small business, consider:

- 1. The size of the company***
- 2. The industry and the extent to which it is regulated***
- 3. Distribution of your workforce***
- 4. The number of countries in which you operate***
- 5. Personnel competence***
- 6. Ethics and compliance function funding***
- 7. Placement of the ethics and compliance function within the organization, including leadership designation and reporting structure***
- 8. Determination of ethics and compliance function lead***
- 9. Structures/systems available to support this function***

For some organizations, the establishment of an ethics and compliance program is a proactive measure to ensure the company operates on a strong foundation; for others, regulatory requirements mandate certain program elements. In either case, a robust ethics and compliance program can create a positive work environment, elevate the company's reputation, and serve as a competitive advantage.

Who should lead the ethics and compliance function?

Identifying the right leader is essential to the success of the program. Government authorities emphasize meaningful oversight rather than symbolic assignments. The individual should have demonstrated leadership skills, a solid reputation, and serve as a role model for character, integrity, and professionalism. The individual should be knowledgeable about the business and its operations, approachable, fair, trustworthy, and perceived as someone who will safeguard the confidentiality of those who contact the Ethics Office.

In addition to integrity and credibility, the individual leading the ethics and compliance function must be vested with sufficient authority, independence, and resources to carry out the program effectively. This includes the ability to raise concerns without obstruction, recommend corrective actions, and operate free from improper business pressure or retaliation.

Ideally, the leader of the ethics and compliance function should report directly to the Board of Directors or Chief Executive Officer; however, for many companies this may not be feasible. Some potential departments that can lead these efforts are the Law Department, Human Resources, Internal Audit, Corporate Responsibility, Finance, or Operations. In such cases, the ethics and compliance leader should have documented, recurring access to the Board, governing authority, or a designated senior leader acting in that capacity. This access should include the ability to escalate significant compliance issues, trends, and risks, and should not be limited to extraordinary circumstances. Any reporting relationship and escalation pathway should be documented in the policy establishing the ethics and compliance program.

The person selected must have the time and resources to dedicate to developing, implementing, and maintaining the program. They should have a solid foundation in legal and regulatory compliance, investigations and issue resolution, and training and communication.

What could the department look like?

If you are fortunate to have a department, there are several options for organizing the compliance function.



- **De-centralized model** — Organizations with multiple business units may use a de-centralized model. A de-centralized model includes the program leader at the corporate office setting overall program requirements and standards, with each business unit having an ethics and compliance leader who develops and implements the program to meet those program requirements. Typically, overarching documents, like the code of conduct, are developed for the enterprise; however, policies, procedures, helpline administration, training and communication are all developed and implemented at the business unit level.

This model enables the business units to take full ownership of their ethics and compliance program and have it customized to meet the needs of their employees. However, this model can create program inconsistencies and increased risk, which could be mitigated through program controls and audits.



- **Centralized model** — A centralized model has a team at the corporate level developing all aspects of the program including the code of conduct, policies and procedures, training and communication, helpline administration and monitoring and auditing.

This model is consistent across the enterprise and avoids duplication of effort. However, a centralized model could be further from the pulse of the organization as it is not necessarily integrated with leadership at the business unit level. Additionally, additional effort may be required to ensure the program elements meet the needs of the entire organization.



- **Hybrid model** — If you combine the two models, you get a centralized function that develops all of the key program elements, like the code of conduct, policies and procedures, helpline administration and training and communications, plus ethics and compliance leaders that are integrated into the business units to customize and deploy the program elements within their groups.

This model enables a consistent program and still elicits leadership ownership of the program at the business unit level.

Whichever model is adopted, the scope, roles, responsibilities, and reporting relationships of all participants in the ethics and compliance program should be documented in policy. The choice of governance structure should be informed by the organization's risk profile, including the nature of its government contracts, regulatory exposure, geographic footprint, and supply-chain complexity, and should be periodically reassessed as risks and operations evolve.

What if it is a department of one?

Realistically, most ethics and compliance departments in small businesses may consist of a department of one. What is critical to successfully implementing an ethics and compliance program is that you have support from leadership and you develop close partnerships with key stakeholders to accomplish your goals. No matter the size of your department, consider establishing the following forums to aid in the development, implementation, and assessment of your program and its initiatives. The scope, composition, roles, responsibilities, and meeting cadence of these forums should be documented, and outcomes should be tracked to support program oversight and continuous improvement.



- **Ethics and Compliance Committee** — An ethics and compliance committee can provide leadership and oversight to your program. They can help resolve major issues, identify risks and potential mitigation strategies. Additionally, they can help identify training and communications needs.

The Ethics and Compliance Committee can be made up of senior leaders from the Law Department, Human Resources, Internal Audit, Business Management, Operations, Communications, Security, Information Technology and any other organization with which you may partner.



- **Working Group** — While an ethics committee can identify issues and actions, many companies also have working groups to help implement the program. The working group can be made up of the same organizations that constitute the Ethics and Compliance Committee, but with select individuals who can partner with the ethics program in developing and implementing the program. The working group should enable greater harmony and integration of effort across organizations within the company that share responsibility for ensuring compliance with laws, regulations, and internal policies.



- **Ethics Liaisons** — An Ethics Liaison program is an excellent way to acquire visibility for your program when you have limited resources and budget. Ethics Liaisons are full-time employees in other roles; however, they are tasked with being the ethics point of contact for their location or business group. Ethics Liaisons can serve as a contact for employees who have questions on policies and procedures or

would like to bring forward an ethics issue. Additionally, they can help implement program initiatives and communicate the ethics program within their group. Since the Ethics Liaisons have full-time jobs, they typically do not have time to develop program elements, and should not be called upon to conduct investigations because they lack the requisite knowledge and skills. However, they can implement program initiatives, serve as a touch point for employees on ethics and compliance concerns, and promote ownership of the program and its initiatives within their organization and at their site(s).

Once again, to ensure continuity and program maturity, your program policy should identify the forums you rely upon to help execute program elements. At a minimum, the forums' composition, scope, roles and responsibilities, and meeting frequency should be documented.

What is the role of the Board of Directors or governing authority?

The Board of Directors or equivalent governing authority plays a critical oversight role in an effective ethics and compliance program. Oversight responsibilities may include receiving periodic updates on program performance, understanding key risk areas, supporting the independence and authority of the compliance function, and ensuring that significant compliance issues are addressed appropriately.

For small businesses without a formal board structure, these responsibilities may be exercised by the owner, managing partner, or designated senior leader, provided the oversight role is documented and actively performed.

What other resources are available to supplement internal governance tools?

There are many resources available to assist you with the design of an ethics and compliance program appropriate for your business, in addition to this toolkit. A solid but non-comprehensive list can be found in Resource 4.

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