carf
CONNECTION

How corporate compliance helps your organization be accountable

THIS ISSUE

by Margaret A. O'Brien

In light of the increasing expectation for corporate accountability and transparency, the CARF standards assist organizations in meeting the requirements handed down by federal regulation and legislation. The intent behind corporate compliance is to protect organizations from potential situations of waste, fraud, and abuse, either intentional or unintentional, especially if it involves a federal audit or investigation. A well-defined corporate compliance program will assist an organization and its employees to deter and detect illegal or unethical activity.[1]

Corporate compliance programs were developed in response to the Federal Sentencing Reform Act of 1984, which created the United States Sentencing Commission in 1987 and led to the development of U.S. Sentencing Guidelines. As a result of large corporate financial scandals in 2001 and 2002, the Sarbanes-Oxley Act, passed in 2002, required *all* publicly-traded companies to submit an annual report of the effectiveness of their internal accounting controls to the Securities and Exchange Commission beginning in 2004. Two provisions of the act also applied to nonprofit organizations.

During the 1990s, standards relating to corporate compliance, ethics, and compliance with all legal and regulatory requirements were introduced in various CARF standards manuals. By 2003, standards for corporate compliance appeared in all of CARF's standards manuals.

Although corporate compliance is relatively new to many nonprofit service providers, organizations that receive direct or indirect federal funds must conform to corporate compliance standards. The accompanying table shows the relationship between CARF's corporate compliance standards, U.S. Sentencing Guidelines, and Sarbanes-Oxley Act requirements.

The core of any effective corporate compliance program is a strong and well-communicated code of ethics. This code should define the culture and expected behavior within an organization—and it needs to be more than just words written on paper. A well-constructed code should set the proper tone within the scope of influence of the organization's leaders and should reinforce their power and ability to lead by example. When an organization develops and refines its programs, the code of ethics should be reviewed, renewed, and updated to reflect the ethical practices of the organization.

A good internal control structure starts with a positive culture and contains elements that help monitor the health of the organization. Current examples of corporate compliance programs primarily involve the financial aspects of an organization. However, exemplary practices show that compliance issues cross various domains (for example, health and safety, employment, and service delivery issues such as eligibility determination). Including these elements as part of your internal control system will help you better understand your organization. It will also help you identify areas of vulnerability for your organization. This structure will also alert management when a boundary of expected behavior has been crossed.[2]

(CONTINUED ON PAGE 4)

[1] Ken Marion, M.A., and Steve Minner, Ph.D., CADC, *Introduction to Corporate Compliance: A Strategy for Effective Design and Successful Implementation*. (Tucson, AZ: CARF, 1997)
[2] Scott Green, *Manager's Guide to the Sarbanes-Oxley Act: Improving Internal Controls to Prevent Fraud.* (Hoboken, NJ: Wiley & Sons, Inc., 2004).

Sarbanes-Oxley and Corporate Compliance

Nonprofit Organizations Sarbanes-Oxley Act

Required actions

- Whistle-blower policy
- Document retention policy

Other suggested actions

- Regular financial statements in accordance with GAAP
- **Conflict of interest policy** (annually signed by board members)
- **Timely filings of 990s** (minimize requests for extensions)
- **Audit committee** (composed of at least three volunteers—one of whom is a "financial expert")*
- Financial statements reviewed by the board and audit committee at least quarterly
- Audit committee to review complaints, allegations, on-going investigations, and report results to board*

CARF Standards

- Board resolution on corporate compliance
- Memo or job description identifying corporate compliance officer
- **Code of ethics** (to include business, human resources, marketing, services delivery and professional responsibilities)
- Procedures to deal with allegations of the code of ethics
- Policies on educating personnel and others on the code of ethics
- Policies on waste, fraud, abuse, and other wrongdoing
- Non-retaliation policy
- Procedures regarding the investigation of allegations —including timelines
- Billing and coding procedures, internal controls, and annual testing
- Policies and procedures on handling subpoenas, search warrants, and other investigations

U.S. Sentencing Guidelines "The Seven Steps"

1. **Established compliance standards and procedures**
   - Should be industry specific
   - Should be proactive/ not reactive
2. **Oversight**
   - High-level personnel
   - Written compliance plan
3. **Personnel issues**
   - Background checks
   - Personnel evaluations
4. **Communication**
   - Code of conduct
   - Sarbanes-Oxley requirements
   - Training and education
5. **Achieving compliance**
   - Auditing and monitoring
   - System to report violations
   - Whistle-blower/ non-retaliation
6. **Discipline**
   - Defined disciplinary system
   - Evenhandedness of discipline
   - Consequences of failure to report
7. **Reporting violations and self-improvement**
   - Can investigate/must report
   - Learn from "near misses," modify program

Key: Predefined process | Document

* Recommended Action

MONOGRAPH EXCERPT

Introduction to Corporate Compliance

A Strategy for Effective Design and Successful Implementation

by Ken Marion, M.A., and Steve Minner, Ph.D., CADC

From the chapter, "Why Have a Separate Corporate Compliance Program?"

The very nature of the human services field sometimes makes it difficult for administrators or board members to understand why they need a corporate compliance program. After all, don't human service organizations exist to serve people and to improve the quality of their lives? And, aren't all members of leadership, management and staff equally committed to doing the "right thing" in the interest of the persons served? And, how could any organization with such a worthy cause be a party to fraud, waste or abuse?

In fact, it can happen easily. We may all accidentally hire evil people during our working lives. The sentencing guidelines require that we have in place a program to limit damage! Simply having a lawyer on retainer is very different than developing the sorts of preventive mechanisms that are discussed in Chapter 8 of the U.S. Sentencing Guidelines and recognized as invoking legal protections for the organization. In fact, retaining an attorney for corporate compliance purposes is not even mentioned as one of the "recommended elements" of a viable corporate compliance plan.

More significantly, an organization cannot divest itself of legal liability simply by requiring its employees to "do the right thing" and/or by having them sign a statement during new employee orientation that obligates them to act in a way that will not violate any law, regulation or organization policy. Many Chief Executive Officers inaccurately believe that they—and their organization, for that matter—enjoy complete legal immunity as long as any wrongdoing is done (1) in violation of company policy requiring staff to act in a reasonable and/or legal manner and (2) without their knowledge, involvement or direction. The government does not even have to prove that a violation of law occurred in order to indict and convict an organization and/or its employees for wrongdoing. Furthermore, CEOs and other managers do not enjoy any protection from prosecution by virtue of not knowing about an act of wrongdoing.

Numerous legal findings have upheld the responsible officer doctrine meaning that a manager is responsible for the actions of his/her employees. It is important to note here that ultimate accountability or responsibility is not "linked" or "tied" to a firsthand knowledge of the employee's actions. And in fact, some courts have held management staff liable because they "should have known" about wrong doing simply by virtue of the position(s) they held in the organization. (U.S. v. Park)

For the experienced manager, it should be obvious that even the best-intentioned organization can face legal liability. It is generally recognized that an effective corporate compliance program is one of the best ways to preclude the conduct that leads to such liability and therefore, minimize the risk of prosecution. It is critical to recognize, however, that the mere establishment of a "paper program" will not satisfy either the spirit or intent of the U.S. Sentencing Guidelines. Corporate compliance programs must be "effective" as defined by the guidelines and should be "...reasonably designed, implemented and enforced so that it generally will be effective in preventing and detecting criminal conduct." This will require the serious manager to give considerable thought to program design, implementation and ultimately, to the designation of a Corporate Compliance Officer to monitor the program, investigate alleged cases of wrong-doing and report to management and the governance authority.

If you found this excerpt from *Introduction to Corporate Compliance: A Strategy for Effective Design and Successful Implementation* useful, you can order a copy of the complete monograph (item number 2603-42, $70.00 USD, $100 CAD) from the CARF Bookstore at *bookstore.carf.org*. Please select "General Interest" from the product categories in the left-hand navigational bar to place your order.

Additional chapters in the 28-page monograph are "Corporate Compliance Defined," "The Government Collects," "CARF Includes Corporate Compliance," "The Federal Sentencing Reform Act," "Designing An Effective Corporate Compliance Program," "Corporate Compliance and the CARF Survey," and "Some Suggestions." An example of a policy for a corporate compliance program is included in the appendices.

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EOE

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Printed in the United States of America.

At a minimum, an organization should address the Leadership (Criterion G) and Financial Planning and Management (Criterion I) standards (both found in the Business Practices section of CARF standards manuals) around corporate compliance. An organization must demonstrate that the following is in place during a CARF survey:

- A code of ethics that addresses business, marketing, service delivery, human resources, and professional responsibilities;
- A formal resolution on corporate compliance adopted by the leadership;
- Written designation of an individual who is the primary "point of contact" for matters related to corporate compliance;
- Specific procedures that guide personnel in responding to subpoenas, search warrants, investigations, and other legal actions; and
- Documented internal controls and internal auditing/monitoring procedures.

Other standards that support a compliance program include the development and implementation of policies on waste, fraud, abuse, and other wrongdoing; a no reprisal approach for reporting misbehavior (a "whistleblower" policy); and finance standards that support the training efforts for those involved in billing and coding.

A good starting point for organizations beginning to develop a corporate compliance program is a review of a CARF publication, *Introduction to Corporate Compliance: A Strategy for Effective Design and Successful Implementation*. This publication is an excellent resource and provides an orientation to corporate compliance requirements for those staff members who have been designated with this responsibility.

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