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Doing more with less: Building cross-functional partnerships on a budget

by Lauren Connell

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In a perfect world, Compliance departments would not need any resources, because individual employees would always conduct themselves in full compliance with all legal standards and ethical norms. In a less than perfect world, Compliance departments need sizable budgets that enable full access to appropriate support vendors, employment of the necessary full-time personnel to handle all tasks, and extra resources to address the unexpected.

In reality, Compliance departments have a limited budget and a wide scope of responsibilities. I'm frequently asked by clients how they can build and improve their programs with a limited budget. Across the board, building cross-functional partnerships is routinely a low-cost, high-return place for Compliance departments to focus their energy.

Cross-functional partnerships also allow Compliance departments to ensure that their policies and procedures are integrated within the business, a key focus of the Department of Justice's (DOJ) 2018 Evaluation of Corporate Compliance Programs.[1] This document is used to evaluate corporate compliance programs under the "Principles of Federal Prosecution of Business Organizations" in the United States Attorney's Manual, also known as the "Filip Factors," in the context of evaluating a company's compliance program.[2]

A great example is third-party due diligence. Third-party due diligence programs are complex and one of the most resource-intensive, time-consuming components of a compliance program. If a Compliance department tries to screen every third party on its own, it will quickly (1) run out of time, (2) not be aware of every third party, and (3) become very frustrated quickly. The reality is that third parties are selected and onboarded by the business. Trying to insert the Compliance department into that process will be frustrating and unproductive to all parties. Instead, the Compliance department should embed basic third-party due diligence within business processes, requiring Compliance department involvement only when elevated due diligence is necessary.

The DOJ has focused lately on whether policies have been "operationalized." Its 2018 Evaluation of Corporate Compliance Programs document makes inquiries regarding the "operational integration" of a company's policies and procedures. It is a Compliance department's ability to get policies and procedures integrated throughout the organization that can make or break a program.

Opportunities for Compliance departments to build relationships with other business departments abound. Each offers a chance for a Compliance department to mitigate risk, strengthen the compliance program, and improve corporate culture, but does so by leveraging the roles and responsibilities held by other departments. Doing so often requires a very simple first step: asking for a meeting. Coming into that meeting with specific areas for cross-departmental collaboration is critical, but also be prepared to learn about how the compliance program is, or is not, working in practice.

Human Resources

A natural partner for Compliance departments, the Human Resources (HR) department directly affects corporate culture by acting as the primary interface between a company and each individual employee, second only to a person's direct supervisor. Therefore HR has the "pulse" of a company overall as well as the ability to change a company's habits for better, or for worse. The following are specific areas where compliance can, or should, sync with HR.

Internal investigations

Internal investigations may be the single most time-consuming area for many Compliance departments. Considering that internal investigations are typically an outgrowth of company policies, it tests a company's willingness to practice what it preaches. Across the board, the majority of internal investigations are directly related to areas HR takes responsibility for. Being able to jointly address these concerns, not only from an HR standpoint, but also from a corporate culture standpoint, to support and develop the values set forth in the company's code of conduct, is key. Unless internal investigations reflect this, employees will soon lose faith that their corporate internal policies have true meaning in day-to-day business.

Annual reviews and compensation

The relationship between every single employee and their employer comes down to a paycheck or other compensation that has monetary value. Rewarding employees for behavior that supports and builds your corporate culture should include financial incentives, because ultimately, employees are there to collect a paycheck. Although nonmonetary incentives can be extremely important and have a significant impact, ignoring the monetary component is shortsighted. The prime example is for sales agents and employees. Incentivizing these individuals solely based on their sales performance, what is often known as an "eat what you kill" compensation plan, focuses employees on short-term goals and isolates individuals from the team. On the other hand, rewarding managers for how they are rated by their subordinates, instead of just their senior managers, encourages a cooperative mind-set and an overall growth-oriented approach.

Training

Human Resources departments are often knee-deep in various training programs, many of which should align with compliance-focused training. Coordinating on the format, delivery, and tracking of training modules is an easy win that can create efficiencies for both departments.

Corporate culture

No department will be as invested in efforts to build and develop corporate culture as HR. For obvious reasons, including recruitment, retention, and employee morale, HR is a natural ally in defining and building corporate culture.

Marketing

Marketing departments may initially see Compliance departments as hindrances that want to limit their creative vision by imposing limits and asking questions. However, Compliance departments should focus on selling themselves as partners that can help promote and strengthen marketing initiatives by providing clear guidance on low-risk areas where marketing funds can be spent. For example, instead of expensive gift baskets for customers, consider encouraging the Marketing department to develop creative and high-end branded items that set the company apart. Branded items are, of course, a win-win, because they can be very useful and also are easily identifiable as having a business purpose.

Gifts, meals, entertainment, and travel

Despite compliance officers' efforts to explain to the Marketing department how great branded items are, many marketing and sales personnel will not buy it. I've seen clients go through the pain of imposing gifts, meals, entertainment, and travel (GMET) limits, especially when transitioning from private to public ownership. But the fact is that limits need to be imposed and enforced. Marketing department personnel and all levels of management should be supportive of this. Offering to take the blame might let them impose rules they know are necessary and save face. Although it is never ideal to garner the disfavor of sales personnel, you may win over the marketing personnel, which can offer advantages on initiatives in the future. Winning the confidence of Marketing can also encourage them to come to you with concerns.

Sales

Sales departments are very often a weak link when it comes to compliance. Their compensation is often based on performance, which can lead to short-sighted goals and a failure to consider long-term implications. In their defense, your sales personnel are also on the front line. Their ultimate role is to be an advocate for your customers and clients, so it is no wonder that they sometimes want to exceed limits or smooth out the process in order to make a sale more appetizing.

Enlisting the support of sales personnel is difficult. They are most often going to be the ones pushing back against compliance policies and procedures or wanting to get things done now, without waiting to complete compliance requirements. It is important to remember that Sales departments are also the revenue centers of the company, and so their feelings of entitlement to push the sale through are not wrong. Without a Sales department, we would all be out of a job. For that reason, it is important to build a relationship with the Sales department as an ally. The more you are able to be involved in routine sales, the more often Compliance can say yes and help facilitate business. Similarly, when a truly concerning red flag or issue arises, the more likely the Sales department will listen to Compliance.

Avoiding legal violations: Protecting individuals

Perhaps the easiest way to sell compliance to a Sales department is that the underlying fundamental goal of compliance is to protect the company — and them as individuals — from legal violations that can lead to steep penalties and jail time. There are numerous examples out there of sales managers, sales VPs, and similar titles (some of which may match your corporate hierarchy) that have been targets of Foreign Corrupt Practices Act (FCPA) or sanctions enforcement actions. The purpose of compliance procedures is to make sure they themselves are asking the right questions and getting the right answers. In meeting with sales personnel, ask them how procedures can be streamlined to improve the speed of business, and make every effort you can to support their efforts (within the confines of legal and ethical business conduct, of course).

Procurement

Procurement departments can be on the "other side" of bribery requests. However, their actions can severely harm business objectives if they find themselves unable to maintain objectivity. Include procurement personnel in your general compliance discussions and make sure that you are aware of, and can address, their concerns.

Finance

Finance is a key gatekeeper and important compliance ally, because Finance department processes are steeped in checkpoints and have built-in layers of scrutiny. Finance personnel are familiar with the importance of internal controls rigor and maintaining auditable records. Furthermore, as gatekeepers of a company's accounts, Finance departments are supportive of efforts to ensure that company personnel are complying with rules, because it often makes their job easier.

GMET

GMET policies are often compliance-maintained policies that have a direct connection to Finance departments. For example, a company will usually still require its personnel to get their supervisors' approval prior to reimbursement. Finance personnel will likely be required to verify that approval — a process that can be time-consuming and frustrating if company employees do not submit the appropriate paperwork. Compliance departments seeking to implement or strengthen GMET policies can work with Finance departments to make sure that employees understand their obligations and, on the back end, that your policies are enforced.

This is an area that third-party vendor software can have a tremendous impact in streamlining. Many GMET management software applications now make the process extremely simple for all parties: employees who are submitting expenses, managers who are approving them, and Finance departments who have to make sure the rules are followed. By facilitating this shift to online GMET expense management, Compliance departments can build in components that strengthen both employee awareness and adherence to the rules. For example, requiring employees to record the purpose and recipient of a GMET expense provides valuable insight into where money is being spent, a common source of funds used for bribery in FCPA enforcement actions. Requiring employees to identify if the recipient is a government official goes one step further, forcing employees to recognize that this is a question they themselves should be asking, as well as showing a company's awareness of an expense recipient's status at the time the expense was made. Working with Finance to implement such solutions may also mean that the budget for licensing such software does not necessarily all need to derive from Compliance.

Third-party payments

I've seen many Finance departments struggle with third-party payments. Finance as a function is tasked with maintaining accounts in a transparent manner, and third-party payments render this a difficult task. When payments come in, or are requested, to third parties unrelated to the company's relationship with a business partner or customer, Finance departments are often aware that this is a red flag but do not have clear guidance from the business on how to handle it. Compliance departments should discuss this area with Finance and determine if this is something that should be addressed. Although there are legitimate reasons for third-party payments (e.g.,a parent company paying for a subsidiary's expenses), they are also often a red flag for tax evasion or money laundering. Clarifying company policy on third-party payments reduces the risk that your company will unwittingly become involved in nefarious schemes and reduce uncertainty in the Finance department — a win on both sides.

Onboarding

The department or persons responsible for the point at which your company onboards a new supplier, vendor, or customer are critical for managing risk. This point, often when these entities are input into a company's systems, applications, and products — or tracking system — offers an opportunity to ensure that the eyes and ears of the company understand what is expected from a compliance perspective.

Audit

Compliance departments have a unique relationship with Audit departments. The "third line of defense," Audit departments often catch the problems and identify weaknesses in internal controls. The Compliance-Audit relationship should be collaborative and mutually beneficial. Too often I've seen the two departments build resentment, with each dismissing the other as ineffective and out of touch with reality. This is the wrong approach.

In addition to offering Compliance departments helpful feedback on how corporate policies and procedures are working in practice, Audit departments can also help build the case for increased resources and authority of Compliance departments. Ultimately, a company wants to obtain approval from their independent auditors. This requires effective internal controls, especially for public companies, to comply with the governance requirements of Sarbanes-Oxley. Use audit findings to build the case for why the Compliance department is critical to successful corporate operation.

Conclusion: Start by scheduling a meeting

Cross-functional partnerships offer Compliance departments a chance to improve the effectiveness of their programs, build support for their mission and goals, and, ultimately, increase the size of the budget by proving that it is money well spent. Without buy-in from all corporate functions, Compliance departments face an uphill battle. Integrating compliance produces real improvements and reduces risks across the organization, not to mention achieving the recommendations and expectations of the DOJ and Securities and Exchange Commission for an "effective" compliance program.

Start building cross-functional partnerships by scheduling time to talk to department heads and reviewing areas of mutual benefit. That conversation is the first step toward achieving a truly operationalized compliance program.

Takeaways

- Building cross-functional partnerships allows the Compliance department to identify win-win goals with other departments.
- When talking with other departments, focus on specific, discrete areas where Compliance department goals overlap with goals of that department.
- Departments with goals that often overlap with the Compliance department's often include Human Resources, Marketing, Sales, Procurement, Finance, and Audit.
- Discussing common goals with each department will allow the Compliance department to leverage their time and build stakeholder support throughout the organization.
- Use your newfound additional work time to make the case that Compliance department funds are well spent and decrease risk across the organization.

1 U.S. Department of Justice, Evaluation of Corporate Compliance Programs, http://bit.ly/2o03nZ5.
2 U.S. Department of Justice, "Principles of Federal Prosecution of Business Organizations," Attorney's Manual, September 19, 2018, http://bit.ly/2QplB3B.