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Leveraging innovation science to design effective compliance programs and solutions

by Jeffrey Driver, Ramona Ramadas, and Betsy Wade

The global COVID-19 pandemic has brought and continues to bring a surge of unprecedented demands to the businesses in which compliance professionals operate. Supply chain, health policy, human capital, health information, telehealth, and education are a few large-scale examples that have been subject to a whirlwind of innovation since shortly after our calendars ticked into 2020.

For a compliance professional entrenched in a carefully crafted compliance program immersed in regulatory and legal principles, these unparalleled demands spurred on by necessity may have put compliance professionals in an uncomfortable spot, especially given that the regulatory frameworks they operate in were built in a pre-pandemic world. But as American businessman Bill Maris stated, “the reality is regulation often lags behind innovation.”^[1] As such, risk and compliance professionals, while mindful of regulatory compliance, have an opportunity to embrace innovation—now more than ever.

This opportunity should be a call to action and may also be considered an essential path forward for compliance programs to adjust to a new reality. This article focuses on how innovation science can be incorporated into the discipline of compliance, compliance program architecture, and compliance practice and risk mitigation.

Innovation science and compliance program design

The United States Sentencing Guidelines laid the foundation for compliance professionals practicing today and are the central source of authority for building an effective compliance program. Tucked away neatly within Chapter 8 of the guidelines is a lone and very specific word—*design*—within the so-called Eighth Element of components that constitute an effective compliance program, which reads as follows:

“In implementing [the seven elements of an effective compliance program] subsection (b), the organization shall periodically assess the risk of criminal conduct and shall take appropriate steps to design, implement, or modify each requirement set forth in subsection (b) to reduce the risk of criminal conduct identified through this process.” ^[2]

The “eighth element” therefore is crucial in that it requires not only a periodic risk assessment, but most importantly as part of the risk response, requires that each element of a compliance program is examined, designed, redesigned (modified), and implemented. Enter innovation science.

The words design and designer have specific meaning in innovation science, which can be conceptually borrowed to fill out the meaning of design in the context of the Eighth Element. In a 2011 seminal work on design, “Change by Design,” Tim Brown and Barry Katz lay out how designers possess a set of design skills that can be applied to solve problems through innovative practices in a wide range of organizational, management, and strategic problems.^[3] Furthermore, nondesigners such as risk and compliance professionals and other organizational leaders in a spectrum of industries can be taught these design skills; they can apply them to specific problems of practice, thereby intentionally designing a more robust program that blends innovation and risk reduction.

Springboarding from the foundational tenants of design thinking as a proven innovation methodology, an eight-step design thinking innovation practice was formulated as a handbook specifically for a diverse set of healthcare risk managers, including compliance professionals. Leveraging a combination of design thinking, risk management, quality and performance improvement, as well as business strategies, *Discovery Design* may ease an interprofessional team into their entry into the utilization of design thinking principles and practices to cocreate breakthrough compliance and risk management programs and risk mitigation.^[4]

Following are some examples of how compliance professionals might start their professional journey to acquire and apply design skills from the innovation sciences, tips on building a compliance innovation infrastructure, and making suggestions for infusing innovation practice into compliance practice to enhance compliance effectiveness. We begin with the central question of all designers—“how might we?”

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