

COMPLIANCE WEEK

THE LEADING INFORMATION SERVICE ON CORPORATE GOVERNANCE, RISK AND COMPLIANCE

A Bird's Eye View of Compliance Departments

By Melissa Klein Aguilar — October 6, 2009

Good news and bad news for corporate compliance officers: Anyone feeling strapped for budget and resources, you're not alone ... but don't expect much sympathy from regulators or enforcement attorneys who might pay you a visit sometime.

Those are some of the findings of a recent poll of 164 compliance executives, who generally expect tight budgets and no staff increases through 2010. The poll, conducted by consulting firm Lexakos, also suggests compliance programs are maturing thanks to stronger reporting relationships and other factors.

Seventy-one percent of respondents expect the number of professional staff in their department to stay about the same; 20 percent expect an increase; and roughly 9 percent expect a staff decrease. Similarly, 59 percent expect their department's overall budget to stay level next year, while one-quarter of respondents expect an increase and 15 percent a decrease.

Nearly half of the group say they report directly and primarily to the chief executive. Rick Wolf, Lexakos founder and a former chief compliance officer himself, says that's a good sign.

"Having the CEO engaged gives compliance and ethics the best chance to become part of the DNA of the company," he says. "Five or six years ago when the compliance function for a lot of organizations was still fairly new, many compliance officers reported directly to the general counsel."

That's still the case for 19 percent of the group, according to the survey. Another 17 percent say they report to a committee of executive management—a response Wolf says likely wouldn't have registered at all just a few years ago.

More disturbing was the statistic that 48 percent of respondents said the compliance function at their company doesn't have adequate resources and funding.

"That's a clear red flag," says Steve Priest, president of the Ethical Leadership Group. He warns that one of the first things enforcement officials and regulators consider in judging whether a company is serious about its ethics and compliance program is the budget for that program.

“One of the most important questions boards can ask the compliance officer is, ‘Do you have the right resources in terms of people, money, and management support?’” he says.

Life at the Top

Priest says concerns in recent years about the potential for conflicts to arise when compliance reports to the chief legal officer have led to a common belief that reporting to the CEO is a best practice. He even notes that when Pfizer recently settled a regulatory probe with the Department of Health and Human Services (complete with penalties of more than \$2 billion), part of the deal was that Pfizer’s CCO report directly to the CEO and the board—and specifies that the CCO “shall not be, or be subordinate to, the general counsel or chief financial officer.”

“Access to the board is key to good governance,” he says. “We’ve seen both great programs and terrible programs where the CCO reports to the GC and the same where compliance reports to the CEO.”

Likewise, Kenneth Handal, former executive vice president of global risk and compliance and corporate secretary at CA, who’s seen both reporting structures in his years in compliance at both CA and Altria, says either can work well. “The key is that the compliance officer has independence and access to senior management and to the board, so the CCO is empowered,” says Handal.

Other individuals to whom chief compliance officers say they report to include the chief financial officer, chief administrative officer, chief risk officer, or an independent committee of the board of directors. However, all of those responses were cited by fewer than 6 percent of those polled.

In what Wolf says is also a change from several years ago, the vast majority of those polled (72 percent) say their compliance function *isn’t* housed within their organization’s law department. “As compliance programs mature, we see the function moving out of the legal department and into a more operational mode, with more of a focus on training, awareness and monitoring,” says Wolf.

Priest says he sees a current trend among many larger companies of putting compliance and other functions that require independence, such as governance, audit, and risk management, all under one function.

Other findings suggest some organizations have more work to do on their compliance programs. While most respondents (77 percent) say a committee of the board of directors receives periodic reports on their organization’s compliance program, a surprising 23 percent say that’s not the case.

“There shouldn’t be any companies where the board doesn’t receive periodic reports on the compliance program,” says Wolf. “That suggests compliance may not be getting enough visibility at the board level at some companies.”

Moreover, 19 percent of those surveyed said that their organization doesn't audit or monitor its compliance and ethics program on a periodic basis, which is a violation of the Federal Sentencing Guidelines, notes Wolf.

Such a practice (or the lack thereof) also is risky, because it's the "lynchpin to program effectiveness," says Wolf. "You can't have an effective program without auditing or monitoring it to see where you need to improve."

Among the remainder, the majority (61 percent) says they audit and monitor compliance annually, while nearly 21 percent say they do so quarterly.

When asked whether their organization had an ethics committee to periodically review ethical questions involving management conduct, such as conflicts of interest, only 44 percent responded affirmatively. Almost half (49 percent) said no, and 7 percent said they needed to establish an ethics review process.

Without a formal ethics review process, Wolf says a compliance program "won't have a lot of teeth."

While companies may conduct such reviews informally, he says, "if a regulator or the Justice Department asked how the company vets those questions to make sure management isn't engaging in any self-dealing, you wouldn't be able to produce any evidence if it's done on a one-off basis."

Codes of Conduct

The findings also suggest that some companies may need to revisit their code of conduct, notes Wolf.

While most (81 percent) report that they periodically ask personnel to state whether they understand and comply with the company's code of conduct, the remaining 19 percent don't.

"That suggests that some companies did it once and haven't gone back to it," he says.

If they haven't done so in the last two or three years, Wolf says companies should review their code of conduct for potential changes, revise it as needed and ask people to re-certify.

"The Code should be an organic document, not something that's written and put on the shelf," he says.

As expected, the vast majority (84 percent) of respondents say their company has a procedure for the confidential, anonymous submission by employees of concerns regarding questionable accounting, auditing, or other compliance matters.

However, Priest says there's no excuse for the 16 percent who say their companies don't. "The [Federal Sentencing] guidelines require it, it costs almost nothing to have a hotline, and it's just good governance and good business," he says.

COMPLIANCE RESOURCES

Does the compliance function in your organization have adequate resources and funding?

Answer	Percent of Respondents
Yes	52.5%
No	47.5%

Source

[Survey Results From Lexakos.](#)

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