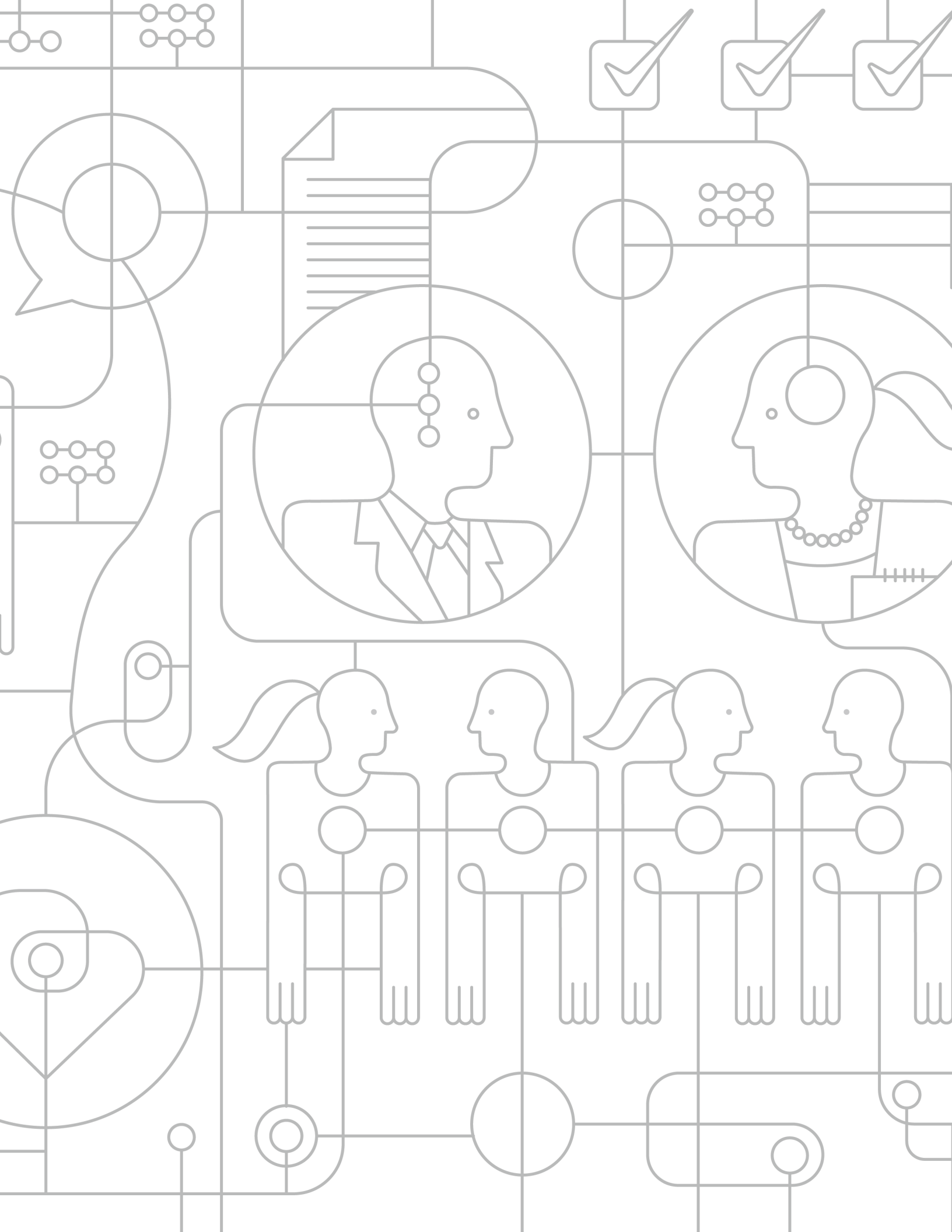




8 Steps for Building an Effective Corporate Compliance Training Program

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Corporate compliance training programs are receiving renewed attention after the Department of Justice (DOJ) released its “Evaluation of Corporate Compliance Programs” checklist (Compliance Checklist) in February 2017. This new checklist adds depth, specifically around the elements of an effective compliance program, to the recommendations outlined by the Securities and Exchange Commission (SEC) and DOJ in 2012’s “A Resource Guide to the U.S. Foreign Corrupt Practices Act” (Resource Guide).

Both documents reflect the DOJ’s interpretation of the U.S. Attorneys’ Manual’s “Principles of Federal Prosecutions of Business Organizations”—used by DOJ prosecutors when deciding what, if any, actions to take against a company in the context of a potential enforcement action.

The Resource Guide provides that the DOJ and SEC will consider “the adequacy of a company’s compliance program ... [which] may influence whether or not charges should be resolved through a deferred prosecution agreement (DPA) or nonprosecution agreement (NPA)[,]” in evaluating whether to grant cooperation credit to a company in the context of Foreign Corrupt Practices Act (FCPA) enforcement decisions.¹ The DOJ and SEC then define an “effective” compliance program that includes 10 components, including “Training and Continuing Advice.”²

In the Resource Guide, the DOJ and SEC state that they will evaluate “whether a company has taken steps to ensure that relevant policies and procedures have been communicated throughout the organization” and whether the information is “presented in a manner appropriate for the target audience[.]”³ and includes “through periodic training and certification for all directors, officers, relevant employees, and, where appropriate, agents and business partners.”⁴

The DOJ’s Compliance Checklist is based around 11 questions to help evaluate a compliance program, including No. 6: “Training and Communication.”⁵ That question is then broken down into four sub-headings, once again emphasizing that a company must carefully consider the design and content of its training program to be considered “effective.”

Based on these sources of DOJ and SEC guidance, I worked with Workplace Answers to develop eight steps I recommend taking when you are ready to tackle building (or improving) your compliance training program.

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1. Criminal Division of the U.S. Department of Justice and Enforcement Division of the U.S. Securities and Exchange Commission, A Resource Guide to the U.S. Foreign Corrupt Practices Act 28 (Nov. 4, 2012) [hereinafter “Resource Guide”], available at <http://www.justice.gov/criminal/fraud/fcpa/guide.pdf>, at 56.

2. Resource Guide at 59.

3. Resource Guide at 59.

4. Resource Guide at 59.

5. Compliance Checklist at 5

1. Set Your Expectations with Code of Conduct Training

Code of conduct training is a basic, foundational element of a compliance program. It helps set a standard, baseline message and communicate the company's expectations for legal and ethical conduct of its employees in all areas of the job. Code of conduct training is an opportunity for the organization to speak directly to employees—so use it! Make sure the message you are sending supports and builds your corporate culture.

This is an area that is very well-suited for online training. Online training provides an opportunity to distribute a consistent message to employees that can, and should, be customized in multiple languages. Online training provides other advantages when distributing to a large group. For example, it gives people the opportunity to complete the training at a time that is convenient for them, and it ensures their completion is recorded.

2. Use Your Risk Assessment as a Guide for Your Training Program

Much like there is no one-size-fits-all compliance program, there is no one-size-fits-all training program. Every compliance program must include components that make the best use of limited resources. A risk assessment serves as a foundation for your compliance program because it can help determine where to focus your time and resources. The highest risks identified by your risk assessment should be directly tied to the components of your training program.

Using your risk assessment as a guide for your training program design will help answer the question the DOJ asks in its Compliance Checklist: “What analysis has the company undertaken to determine who should be trained and on what subjects?” Keep in mind that a risk assessment does not need to be an expensive, six-month long process. A skeptical eye is needed whenever someone tells you that something must be done, and done in one particular way. As one of my prior mentors used to say, “there is no one way to do something right.”

I often criticize costly risk assessment reports that provide glossy charts, graphs, and high-level discussions to outline a company's risks. That is a waste of time and money in my view. CCOs will candidly admit that fancy reports, while costly, do not really help them understand their compliance program. It is very possible to conduct an effective risk assessment internally. It is an ongoing process, based on a thorough review, that should be used to inform how your compliance program is built—including training.

3. Identify Responsible Gatekeepers and High-Risk Employees

The DOJ's Compliance Checklist includes “Risk-Based Training” as one of the four training subcategories. It asks:

“What training have employees in relevant control functions received? Has the company provided tailored training for high-risk and control employees that addressed the risks in the area where the misconduct occurred?”

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This is moving the ball forward in the DOJ's expectations for corporate training programs. While the Resource Guide stated that companies "may want to consider providing different types of training to their sales personnel and accounting personnel," the Compliance Checklist makes it clear that targeted training is the new standard.

Targeted training involves providing specific training to identify an individual's role in implementing a policy or to reduce a specific risk. Targeted training is a critical step in "operationalizing" your compliance program. Policies and procedures won't work if the employees responsible for implementing them don't know what to do. Identify each operational touchpoint, where approvals or input is required, and make sure those employees receive background information on what the policy is for and why the company follows it so they can be effective at complying with the policy.

Targeted training is also a way to make sure that the individuals most likely to face a high-risk situation have the practical tools they need to manage the situation in a way that reduces risk for the company. The training for these high-risk employees should include hypotheticals and real-world examples to help them get ready to react if they are faced with an illegal or unethical request.

4. Train Your Senior Executives and Board Members

Board members and senior executives are busy professionals and many think that they are experienced enough not to need more training. But, that very belief indicates they don't get it! A compliance officer's role is to target their training to the areas that directly impact senior leadership: oversight responsibilities as well as their role in promoting and maintaining corporate culture.

The best place to start for training your senior executives and board members is to make sure they understand the risks, financial and otherwise, of a weak compliance culture. Unless a senior leader happens to have prior experience in compliance, each will need to learn how to oversee and monitor the compliance issues that fall within their reporting lines. The recent VW and Wells Fargo scandals show what happens when a company's top leaders do not understand the value of a compliance program.

5. Communicate the Importance of Ethical Conduct with Third Parties

Most compliance professionals realize that their greatest risks often come from third parties. Unlike internal employees, who are immersed in your corporate culture, a company has less influence over their third parties; however, the company can be subject to FCPA liability for the actions of third parties.

An online training platform can provide an efficient, cost-effective means to communicate to third parties the company's expectations for legal and ethical conduct. By showing a willingness to expend resources to provide training, which, with online training, do not need to be significant, the company reinforces its message: this is important to us. Third party training is particularly effective when

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6. Compliance Checklist at 5.

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6. Use Targeted Training for Remediating Misconduct

Interestingly, the DOJ also states that tailored training should be provided to employees involved in areas where misconduct occurred: “has the company provided tailored training for high-risk and control employees that addressed the risks in the area where the misconduct occurred?”⁶ This question advances our understanding of how targeted training should be used—not just as a preventative tool but also to remediate when incidents or problems occur.

Internal investigations should identify not only what went wrong, but also why it went wrong. Frequently, the problem will be a key internal control checkpoint. Providing training to the individuals responsible for maintaining that checkpoint will help to prevent the same thing from happening again.

7. Be Careful Not to Over Train!

Targeted training should be just that—targeted. The disadvantages from overtraining can be almost as acute as undertraining. An employee who is required to attend trainings on topics or policies in which he or she plays little or no role will soon lose interest and won’t be ready to pay attention to the training that is important for their role.

I’ve seen companies acknowledge a similar problem in relation to the number of policies and procedures certain employees are required to follow but rarely is the same problem discussed with regard to training. Think about how many training sessions an employee is required to attend over the course of a full year. If the number is too high, consider linking training sessions on similar or related policies or integrating several trainings within a half-day session to focus employees at the task at hand—learning—instead of cramming training in with other workday commitments.

8. Document Your Training Program Design

Regardless of how great your training program may be, as far as the DOJ and SEC is concerned: if it isn’t documented, it didn’t happen. Online training offers great advantages over in-person training in this area. Online training often provides a quickaccess portal that can provide company wide statistics on training completion status. Inperson training can be more difficult to document, so to record who received training, consider using sign-in sheets or collecting certifications of attendance.

Do not just document the training provided; also document the design and content of your training programs. Make sure that your reasoning process and conclusions regarding who and what training to provide and how it ties back to your risk assessment, is documented. A well-thought out program is as critical as any single training session.

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Conclusion

Use these steps as a guide for building a corporate training program but remember—there is no one-size-fits-all compliance program! The right training program for your company is the one that best addresses your unique risk profile.

Learn more about EVERFI and
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About Michael Volkov

Michael Volkov, Principal, The Volkov Law Group, has over 30 years of experience in practicing law. A former federal prosecutor and veteran white-collar defense attorney, Mike is an expert in compliance, internal investigations and enforcement matters. Mike was a federal prosecutor for over 25 years, and has extensive trial experience in federal court. He also served as chief crime and terrorism counsel for the Senate and House Judiciary Committees.

Mike maintains a highly popular FCPA blog – Corruption, Crime & Compliance. He is a regular speaker at events around the globe, and is frequently cited in the media for his knowledge on criminal issues, enforcement matters, compliance and corporate governance. He can be reached at mvolkov@volkovlaw.com.

Mike is licensed in VA and DC.

