

TEXAS LAWYER

JUNE 1, 2015

An ALM Publication

www.texaslawyer.com

energybuzz

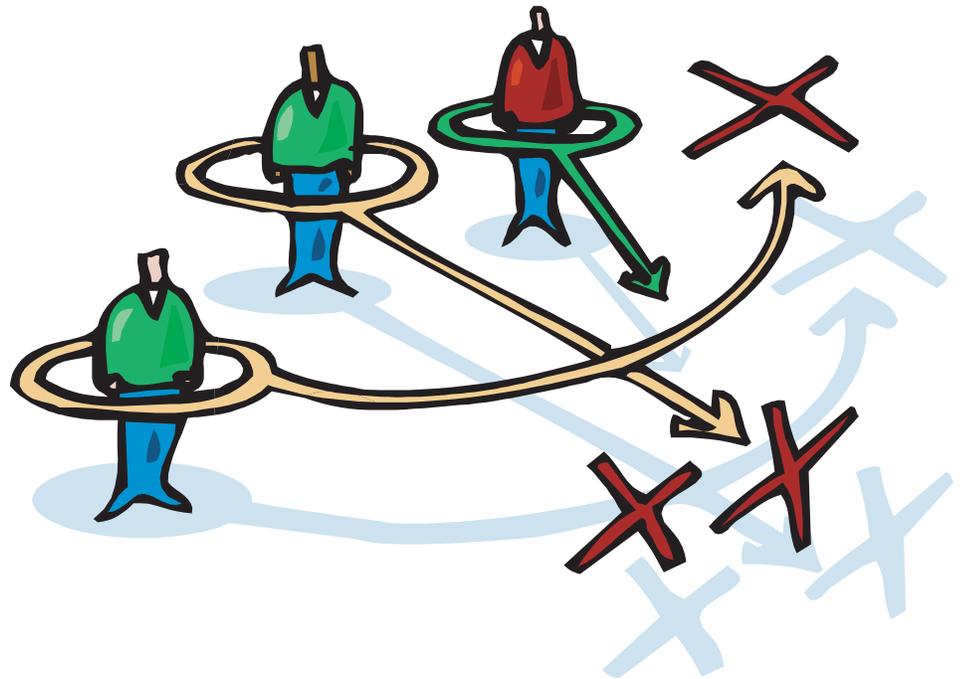
DESIGNING AN EFFECTIVE INTERNAL COMPLIANCE PROGRAM

By CHRIS REEDER AND LACEY E. WATSON

In-house lawyers are responsible for ensuring a company's legal compliance, so at the end of the day, the proverbial "buck" stops with them.

While some tasks can be outsourced, no one knows the company's internal workings as well as the in-house lawyer. Most of the compliance responsibilities no doubt fall into in-house counsel's lap by default. Often this involves monitoring every aspect of a current transaction, while ensuring that previous transactions remain in compliance. Additionally, it is important to demonstrate to regulators that the company exhibits appropriate diligence in complying with their regulations. Meanwhile, the budgeting tight-rope must be walked: managing to increase productivity while reducing costs, creating a natural tension on the high wire.

But as any good performer would, seasoned in-house lawyers defy gravity and balance the pole between deal-making and compliance, with only the thin net of outside counsel to catch a fall. While this delicate balance requires considerable effort, basic compliance strategies and principles can help one stay on the wire, and establishing a solid internal compliance



program can help create an effective system of checks and balances while relieving some of the stress created by the compliance elephant, ever-present under the big top.

By following these simple steps, in-house counsel—i.e., the ringmaster—can help ensure that the show goes on.

1. *Learn the ropes.* Firstly, review and identify the statutes and obligations that must be followed, then determine which agencies possess jurisdiction to enforce those obligations. Next, review the applicable agency's regulations and

identify refinements and associated procedures (such as audits or reporting requirements), keeping in mind that regulations might vary from state to state. Organize findings by identifying compliance categories based on the type of standard and enumerate the standards within each category.

2. *Delegate.* Designate a compliance official who can ensure lower-level compliance personnel follow company standards. Then, identify and define a person or manager within each subgroup or specialty area to oversee their group's compliance responsibility. Allo-

cating responsibility provides greater compliance monitoring at the level where it must occur. This should entail both proactive authority to prevent non-compliance, and remedial authority to cure and report non-compliance.

3. *Train.* Identify the compliance standards employees in varying positions need to know and set up regular training schedules with assigned instructors in order to communicate applicable regulatory obligations. Create a permanent record to log trainings and attendance, and make it a best practice to keep employees aware of what is required of them through updating materials as obligations change over time.

4. *Create standards.* Define the goals and objectives for each compliance standard and a method for measuring how well each function meets its obligations. Deficient compliance levels can then be determined and remedial plans can be created to bring about sufficient compliance within acceptable time frames.

5. *Establish reporting mechanisms.* Self-reporting should be done even if it is not required by a regulatory agency as a mechanism for tracking internal progress and creating a paper trail. Furthermore, regulators like to see a “culture of compliance” which can be achieved by regularly and effec-

tively communicating company-wide updates; creating multiple channels for employees to report concerns and educating employees on these resources; and establishing a means by which employees can access those in authority to report concerns. Such employee reporting should not only be made available, but encouraged and incentivized. Non-compliance should also be reported to any applicable agencies as soon as it has occurred, with consideration of the agency’s policies on self-reporting, to avoid any possible administrative penalties and sanctions. In addition, compliance managers should prepare and submit routine reports as well as timely reports of non-compliance.

6. *Keep records.* Create compliance program checklists or reports for each compliance item—these can come in the form of a spreadsheet updated on a determined basis. Establish a budget when creating these checklists and consult with outside counsel. Remember, creating a template that ensures compliance internally is cheaper than the alternative: facing an enforcement action.

7. *Utilize outside feedback.* Consult with the regulatory agencies on a routine basis and obtain their feedback concerning compliance procedures and recording methods. Implement

changes as needed. Also engage outside lawyers and consultants to review materials, training schedules, procedures and audits. Having someone on the outside review these items with an unbiased perspective is always a good idea.

While implementing these procedures can be time consuming and even costly, the resulting culture of compliance is a key factor to ensuring an organization’s success, a benefit that certainly makes all the effort worthwhile.



Chris Reeder is a partner in Husch Blackwell in Austin. He represents a variety of clients within the energy industry, and focuses on a broad range of regulatory issues including compliance and enforcement, commercial disputes, development related



matters and certification. **Lacey E. Watson** is an attorney in the firm. She applies her prior experience as corporate and regulatory counsel for a wind energy development company in her daily representation of clients in the energy industry.