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[National Government Ethics Summit](#)

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Compliance Programs in Government: Affecting Ethical Culture

By: Emil Moschella

Executive Director,

Rutgers Center for Government Compliance and Ethics (RCGCE)

<http://rcgce.camlaw.rutgers.edu/>

Thank you Joe and the Office of Government Ethics for inviting me to present on behalf of the Rutgers University Law School and the Center for Government Compliance and Ethics at the law school.

The Center was established in July 2010 to bridge the gap between how the private sector and the government approach compliance and ethics. While not all companies have compliance programs those that are heavily

regulated by the government, or have a business relationship with the government have compliance and ethics programs.

Other than the existence of formal compliance programs on the private side, there is much that is the same between the government and the private sector. For instance, corporations don't want their employees to have dual loyalties; they want them to protect corporate property, and the integrity of their information systems. They want to treat all equally; and are concerned with what employees do in the name of the company; among other things.

One main distinction is that virtually all companies will say in their codes of ethics that it is a corporate value that all employees, to include board members, will comply with

the letter and spirit of the law in carrying out their duties.

The Federal government's code of conduct does not contain the same commitment. In the corporate world, not only is there a code commitment to comply with the law, but the words are backed up by a management program to implement that and detect and prevent non-compliant behavior.

The federal ethics rules state that: "Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain." Corporate compliance and ethics codes have similar requirements, but prohibit all possibly illegal and unethical behavior regardless of individual personal gain.

Now the private sector did not come upon this as some enlightenment from above, but it was motivated in large measure by the desire to protect the bottom line (both in terms of money and reputation), and it has close to a 25 year head start on the government in terms of developing management systems to detect and prevent violation of the law.

Two points at the outset – these management systems address possible violations of all laws (not limited to codes of conduct) and are based in very large measure on the Federal Sentencing Guidelines for Organizations, first issued in 1991. That guidance basically tells an organization that if it takes steps to detect and prevent violations of the law, those steps will be taken into consideration at sentencing. Note the existence of a

compliance program is not a defense to the criminal action, but may be used to mitigate the penalty.

Additionally, there is another incentive. Department of Justice policy requires that the federal prosecutor take into consideration the organization's effort to detect and prevent the criminal activity as part of the decision as to whether an organization should be charged.

While these programs grew out of the Sentencing Guidelines, companies have not limited their application to the preventing violations of the criminal law, but all laws.

Benefits:

There are benefits to the organization with a compliance program and I will identify what I believe are the secondary benefits first. These include:

- A. Mitigating the risks of criminal and civil liability – a primary benefit in the private sector.
- b. Improving agency effectiveness and efficiency in getting the job done right the first time.
- c. Addressing issues before they reach critical mass – that is, outside the harsh light of adverse press reaction, inspector general, and congressional inquiries – often a major distraction to ordinary agency business and often exacerbated by the political atmosphere.
- d. Because the government often requires regulated business to have compliance programs, it would have much more credibility with the private sector when it has its own programs internally, and by creating a real world model for the private sector to emulate.

e. The Department of Justice's Office of Inspector General reviewed the FBI program and concluded that identification, analysis, and mitigation of legal compliance risks has the potential to significantly reduce these risks in FBI operations and that other agencies may wish to consider implementing a similar kind of program.

But the primary benefit of such an effort, I believe, is that it is a start down the road toward restoring trust in government, by positively affecting the ethical culture within government agencies. Of course the question is how do I get from advocating an management process that is geared to detect and prevent violations of law to affecting ethical culture?

I start off with the premise that the measure of an ethical organization is the extent to which an organization makes

doing the “right thing” a priority. My second premise is that a “right thing” to do (and a baseline expectation of the public it serves) for all government organizations is that it comply with the law while it carrying out its responsibilities.

My conclusion follows that an integral part of any government effort to do the right thing (behave ethically) must include measures to comply with the law.

Ok, but we already take measures to uphold the law. We have vision statements, operating policies and principles, value statements that extol integrity in all aspects of our work. We write policies that implement the law; we write regulations; we have significant external oversight mechanisms: IGs, congressional oversight, public interest groups. Besides which our people are good, dedicated, trustworthy and want to do the right thing.

And as much as I agree with those generalizations those efforts may be, over time, sometimes affected by:

1. Turnover in leadership and in personnel actually managing and carrying out the program;
2. Budget cuts affecting staffing, training, monitoring;
3. Pressure to get the job done at any cost;
4. Changes in law that do not filter down to the employees;
5. “Shortcut creep” that blur the lines for compliance with the law.

So while the measure of an ethical organization is the extent to which it makes doing the “right thing” a priority; and a right thing to do is to comply with the law, I submit that in comparison to the private sector, government

organizations have not done enough to manage their responsibility to comply with the law.

Let's try on another premise: What a leader does is more important than what he or she says. Actions, in fact, speak louder than words. Clearly, if someone says one thing and then does another, we would disregard the words and focus on the actions. But this can be even more subtle in the workplace, where the rules can be pushed aside in the face of expediency or lackadaisical monitoring. A formal compliance program adds actions to the words that all government executives will eagerly state: that their agency will be operated and administered in compliance with the law.

What kind of actions? There will be an executive level compliance officer with direct access to the highest level

officials within an organization. There will be active participation in the program by all employees and such participation will be an element in the process of appraising employee performance, including the highest level employees. There will be communications and training of all employees regarding their roles and responsibilities including their ability / obligation to raise compliance concerns and be protected in doing so through a meaningful non-retaliation policy.

Most importantly, there will be structured efforts on the part of people with mission responsibilities, guided by the compliance office, to identify compliance weaknesses and to fix them – that is identify the absence of administrative controls that can lead to non-compliant behavior. Those

controls are the policies, training and monitoring that guide the employees in how they carry out their duties.

All these activities will take place under the umbrella of the “Compliance and Ethics Program” and clearly demonstrate that compliance with the law is not just a talking point but an ongoing element of doing the right thing that is a priority in the organization and that employees should engage in business conduct that is reflective of an overall agency commitment to ethical behavior.

Governmental self-control was recognized by James Madison as a challenge. He wrote: “the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.” It is time for agencies of government to control themselves

and integrate compliance with the law into existing ethics programs.

Affecting the culture of any organization will take time and may take several different approaches over time.

Implementing a compliance program seems to be a “low hanging fruit” solution that will have an immediate impact on the individual behaviors by leading through organizational example.

Thank you.