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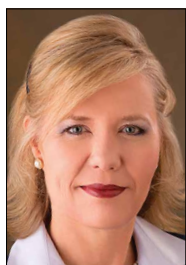
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by Deena King

# Taking compliance programs to the next level: Using business processes

- » The seven elements of a compliance program create an integrated business system.
- » Applying process-oriented principles to how we design and manage compliance programs has the potential to increase their effectiveness.
- » Ranking the chronological order of the seven elements will help you devise a master compliance process.
- » A strength or weakness in any step will similarly affect the steps that follow it.
- » Implementing a master process based on the principles discussed above is largely a matter of planning and scheduling.

Anyone who has been in the compliance business for any amount of time knows that the primary framework for establishing a compliance program is comprised of the seven elements found in Chapter 8, Part B, Section 2.1 of the Federal Sentencing Guidelines (FSG §8B2.1). When I first began my work in Compliance, the compliance officer I worked with always introduced these elements to organizational compliance managers as a master process.



King

The more I grew in the industry, the more I realized how brilliant a “master compliance process” was for one simple reason—the seven elements are not mutually exclusive but interrelated. Most of the elements either: (1) require or produce information that is (2) produced or required by other elements. In other words, each element does not stand alone. In reality, the elements of a compliance program create an integrated business system.

If you go online, you can find several images and models for “compliance process” so I am not alone in this understanding. Many compliance leaders recognize the benefits of adopting a master compliance process that is wholly compatible with the FSG’s seven elements.

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This article will review a few possible ways of incorporating business process techniques into compliance programs. The focus will be at the governance level, but this concept also applies at division/department

levels. The following paragraphs will provide rationale for this approach as well as give an overview of the benefits of a master compliance process.

First, let's quickly review the seven elements often presented as the foundation of an effective internal compliance program:

1. Implementing written policies, procedures, and standards of conduct.
2. Designating a compliance officer and compliance committee.
3. Conducting effective training and education.
4. Developing effective lines of communication.
5. Conducting internal monitoring and auditing.
6. Enforcing standards through well-publicized disciplinary guidelines.
7. Responding promptly to detected offenses and undertaking corrective action.<sup>1</sup>

Now let's shake things up a little by asking one question: Are there any items on this list that cannot be started (or updated) unless another item is finished first? For example, what do we need to know before we can write policies and procedures? Or, do any elements need to be in place before we can begin auditing and monitoring? Yet again, what information is required before disciplinary action can be taken?

What these questions help us recognize is that buried in the seven elements is a business process. At its most fundamental, business process helps units, departments, and companies get things done (i.e., "Before we can do this, we have to do that, etc."). Business process can work to the advantage of compliance professionals by helping us put order to what can often be cluttered and disorganized. In short, applying process-oriented principles to how we design and

manage compliance programs has the potential to increase their effectiveness.

Before getting into a couple of possible ways the elements contained in the FSG can be formed into a master compliance process, let's do a short exercise. Below are seven quotes taken directly from FSG §8B2.1. For this exercise, please keep in mind the idea that certain items on this list need to be completed before other items. There is no right answer—this is just an opportunity for you to begin thinking in terms of what process might work best in your organization. Once you have made your choices, I will present one possible way to organize these elements into a basic master compliance process.

*Instructions:* In the box on the left, rank each item based on what you believe should be finished first, then second, then third, and so on.

*Auditing/Monitoring:* Ensure that the organization's compliance and ethics program is followed; Monitoring and auditing to detect criminal conduct; Evaluate periodically the effectiveness of the organization's compliance and ethics program. (§8B2.1.b.5.A-B)

*Policies/Procedures:* The organization shall establish standards and procedures to prevent and detect criminal conduct. (§8B2.1.b.1)

*Compliance Organization:* Governing authority shall be knowledgeable and shall exercise reasonable oversight; High-level personnel of the organization shall ensure the organization has an effective compliance and ethics program; Specific individual(s) within the organization shall be delegated day-to-day operational responsibility; Exercise of due diligence. (§8B2.1.b.2.A-C & 3)

- Change/Improve:* After criminal conduct has been detected, the organization shall take reasonable steps to respond appropriately to the criminal conduct and to prevent further similar criminal conduct, including making any necessary modifications to the organization's compliance and ethics program. (§8B2.1.b(7))
- Requirements/Risks:* The organization shall periodically assess the risk of criminal conduct and shall take appropriate steps to design, implement, or modify each requirement. (§8B2.1.c)
- Communication/Training:* Communicate periodically and in a practical manner its standards and procedures, and other aspects of the compliance and ethics program, to the individuals by conducting effective training programs and otherwise disseminating information. (§8B2.1.b.4.A&B)
- Implementation:* [The organization's] compliance and ethics program shall be reasonably designed, implemented, and enforced so that the program is generally effective in preventing and detecting criminal conduct. (§8B2.1.a.2)

Congratulations! You have just created your first master compliance process. By pondering what order each of the above should be completed, you now recognize the value of process.

As mentioned above, there is really no right or wrong answer. While some elements definitely need to be completed before others can even be started, if you think the "Governing authority shall be knowledgeable..." should come before "The organization shall establish standards and

procedures..." then that is what will work best for your program.

Below is a short discussion of a one possible way the above elements could be organized in an effort to create an orderly, effective master compliance process. This discussion is followed by an overview of three currently published master compliance processes.

### **A basic master compliance process**

The following seven steps outline one possible way to organize program elements into a basic master compliance process. This example will help give you an idea of how applying process might work in your own organization.

#### **Step 1: Identify requirements/risks (§8B2.1.c)**

The foundation of any business process is the objective. All business processes exist for a reason or purpose. When it comes to compliance, the objective is to be compliant with all relevant requirements of all relevant laws and regulations. To accomplish this objective two things are required: (1) you must know what legal/regulatory requirements you are required to comply with; and (2) you must know which of these pose the greatest risk to your organization. Item 2 will help focus limited compliance resources towards areas of high risk. The end result of Step 1 is a complete inventory of an organization's compliance risks and requirements. This information is vital to the success of Steps 2 through 7.

#### **Step 2: Compliance organization (§8B2.1.b.2.A-C & 3)**

A key component of any business process is *who*—who is responsible to manage and/or administer that process? Once compliance requirements are identified and risks are assessed, someone must do something with this information. That is one of the primary

reasons the Federal Sentencing Guidelines require a compliance organization that includes personnel from throughout the entity.

As most compliance professionals already know, a compliance organization has multiple levels: governance, high-level, and operations.

Governance leaders

oversee, high-

level executives

and managers

administrate,

and operational

personnel “do.”

Here is why Step 1

provides valuable

information for

Step 2. The core

competencies

of each of these

people are different.

For example, the

skills required to

oversee, administer, and operate an Equal Employment Opportunity (EEO) compliance program will be different than those required for an Environmental Protection Agency (EPA) program, a Federal Energy Regulatory Commission (FERC) program, a Sarbanes-Oxley (SOX) program, or a corporate-wide program. Knowing and understating compliance risks and requirements helps leaders determine who should oversee, administer, and manage those requirements.

### **Step 3: Policies/Procedures (§8B2.1.b.1)**

One of the key requirements of a moderately mature business process is that it be documented. A common maturity term is “defined.” Yes, it can be argued that a process can be “established” without being “documented.” However, if an auditor or regulator asks to evaluate your compliance program, you cannot prove that standards,

policies, and procedures have been established unless they are documented.

Many leaders, managers, and front-line personnel often push back on documentation because it can be arduous and time-consuming. But, these efforts are worth it.

In the end, everyone will understand their

responsibilities

and duties *and* will

have a place to go

if there are ever

questions regarding

what should be

done in specific

circumstances. Thus,

documentation is

at the heart of a

well-functioning

compliance process.

One way to look

at this step is as a

translation phase.

This is where all the

legalese of laws and regulations is translated into standards, policies, and procedures that can be understood and carried out by non-legal personnel. Step 1 provides the laws and regulations that need to be translated and Step 2 designates who will do the work of Step 3.

### **Step 4: Communication/Training (§8B2.1.b.4.A&B)**

Communication and training are among the most significant components of a business process, because a documented process that no one knows about or is trained how to use is almost worthless. Thus, the communication and training of information created in Step 3 are key for any effective compliance and ethics program. In addition, how can you communicate and/or train organizational personnel on policies and procedures that have not been established yet?

**Communication and training are among the most significant components of a business process, because a documented process that no one knows about or is trained how to use is almost worthless.**



Most regulatory requirements include a communications and training component. They require an organization to periodically communicate standards and procedures using training or other means such as newsletters, speeches, emails, etc. Essentially, this element requires that *all* employees and agents of an organization, from the Board down to contractors and agents, be made aware via communication and/or training of the elements of compliance and ethics that affect them.

**Step 5: Implementation (§8B2.1.a.2)**

Business processes are not just paper exercises—they are meant to be carried out, executed, and/or accomplished. A statement that supports this idea comes from one of the FERC compliance guidelines: “It is not enough to create a good compliance program on paper; the company must carry through to implement the program with effective accountability for compliance.”<sup>2</sup> A perfectly designed compliance and ethics program will be the equivalent of a paper tiger if it is not implemented. Implementation includes promotion and enforcement. And how can a compliance program be implemented and enforced if it has not yet been designed (Step 3) and employees have not yet been trained and/or informed (Step 4)?

**Step 6: Auditing/Monitoring (§8B2.1.b.5.A-B)**  
A hallmark of maturity in a business process is measurement. The FSG embody this by requiring that an institution “evaluate the

**A hallmark of maturity in a business process is measurement. The FSG embody this by requiring that an institution “evaluate the effectiveness of the organization’s compliance program.”**

effectiveness of the organization’s compliance program.” FERC and other regulatory agencies have similar requirements. This requires an evaluation of the overall compliance program and individual programs to ensure all the components of an effective program are in place and functioning. This process is sometimes referred to as program

evaluation and would include evaluating how Steps 1 through 7 are working. Once again, how can a program be evaluated and compliance systems be monitored and/or audited if it is not already in place (Steps 1-5)?

**Step 7: Change/Improve (§8B2.1.b(7))**

The most effective business processes recognize the importance of improvement. After a process has been designed, implemented, and evaluated, changes are often necessary to fix what is not working or improve what is working. The term for incorporating ongoing changes into a process is continuous improvement. Continuous improvement as a modern discipline can be traced back to the work of Dr. J. Edward Deming, a famous quality expert who designed a highly effective technique that serves as a practical tool to carry out continuous improvement in the workplace. This technique is called the PDCA Cycle. PDCA is an acronym for Plan, Do, Check, and Act.

Thus, Step 7 represents “acting” on what was learned after checking (Step 6). Continuous improvement is all about making changes that will help the compliance process

become more and more effective. Once monitoring, auditing, and evaluation have occurred, one or more of the areas of the compliance and ethics program may need to be modified in order to improve the program as a whole.

**Putting it all together**

A basic master compliance process that includes the elements discussed above might look like figure 1.

You will notice this diagram does not represent a perfect cycle. This is because the changes required as a result of Step 7 (Change/Improve) may need to be made *anywhere* in the process. For example, maybe a legal requirement was missing or unknown (Step 1), a newsletter contained incorrect information (Step 4), or an enforcement process needs to be fine-tuned (Step 5).

In addition, this figure helps us recognize a domino effect. A weakness in Step 3 can subsequently weaken Steps 4 and 5; a weakness in Step 2 can weaken Steps 3 through 5, etc.

**Some examples of master compliance processes**

What follows is a short discussion of three existing master compliance processes. Many more are out there, but this is a good sample of how others have adopted master compliance processes.

**Agile Product Governance and Compliance**

One example comes from a company called RapidFlow Apps. This company has designed an application add-on that allows “companies to manage product policies and use [a] built-in compliance framework.” This module uses a 5-step compliance master process illustrated in figure 2.<sup>3</sup>

As illustrated, this company promotes and uses a 5-step master compliance process:

1. Define regulatory compliance objectives.
2. Track compliance relative to and based on requirements.
3. Calculate compliance, (i.e. determine if the data has passed/failed).
4. Report compliance to entity leadership.
5. Manage compliance by making changes where necessary.

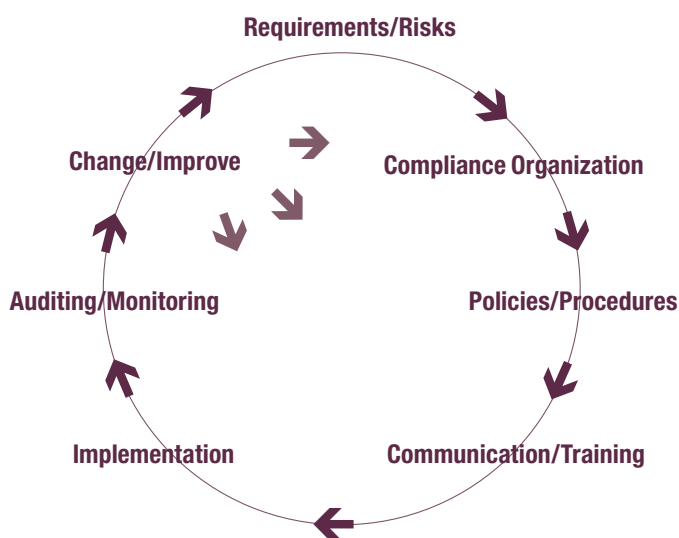


Figure 1. A Basic Master Compliance Process

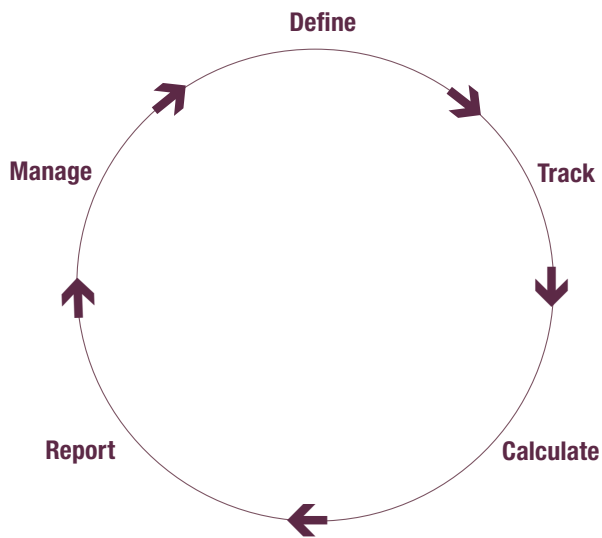


Figure 2 – Agile Product Governance and Compliance Process

**Janco Associates, Inc.**

A second example comes from Janco Associates, Inc. This company has distilled compliance program requirements into a 4-step master process. These steps are outlined in figure 3.<sup>4</sup>

These four steps include:

1. *Define*: Document how the company will comply by establishing policies and rules.
2. *Discover*: Determine whether or not the company is in compliance through regular audits/reports.
3. *Evaluate*: Based on what is learned during discovery, determine where the greatest compliance risks are.
4. *Remediate*: Correct the compliance policies and rules that need to be changed based on discovery and evaluation.

**Compliance in One Page**

One final example is the recently published approach, *Compliance in One Page*<sup>5</sup> (See figure 4).

This particular process is very similar to the basic process discussed above. However,

one additional element has been added—leadership and corporate culture, because leadership and corporate culture together represent two key components that can make or break an entire compliance effort. In other words, great leadership can be the catalyst that creates and upholds a culture of compliance. On the other hand, poor leadership can be the catalyst that creates and encourages a culture of non-compliance—as seen by the well-documented failures at Enron, Arthur Anderson, WorldCom, and others.

This is why figure 4 uses a “cloud” or “water” to surround each and every component of the Compliance in One Page process. The color blue was used as a symbol because leadership and corporate culture are like the air we breathe or the water to a fish. It is all around us in everything we do, see, and hear in our organizations. Both set the tone for compliance and ethics.

**Implementing a compliance master process**

Implementing a master process based on the principles discussed above is largely a matter of

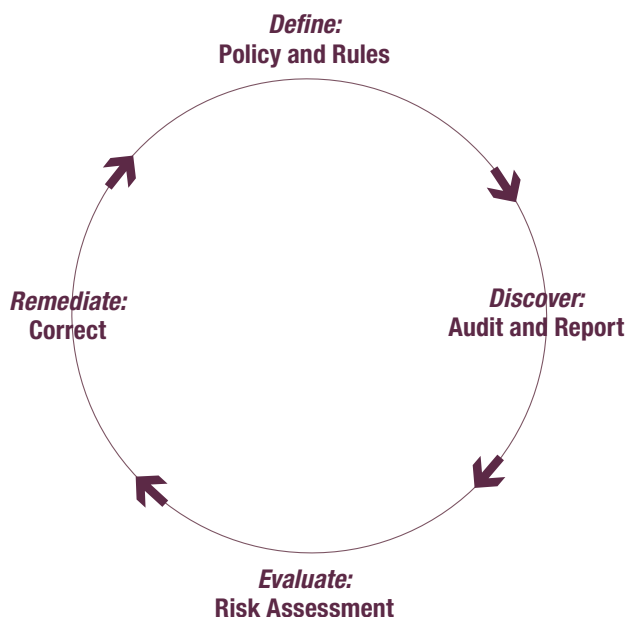


Figure 3 – Janco Associates, Inc. Compliance Master Process

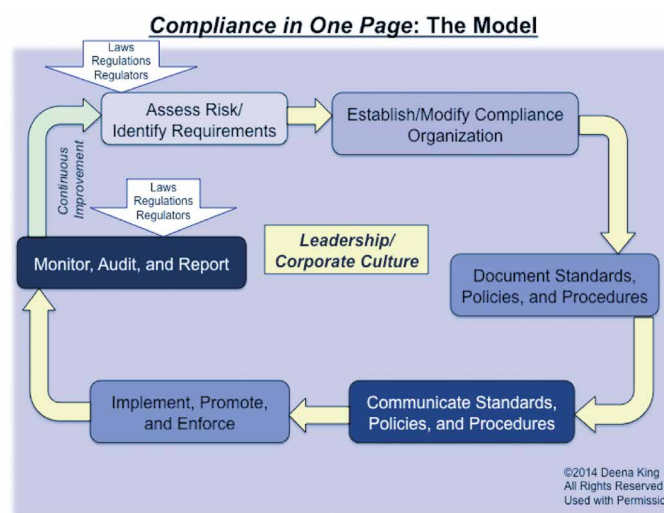


Figure 4 – The Compliance in One Page Master Process



planning and scheduling. One method might be a basic annual action plan that includes the following elements:

- ▶ What
- ▶ Who
- ▶ Deliverable
- ▶ Due Date
- ▶ Status

For Step 1, Identifying Risks and Requirements, a basic action plan might look like this:

1. **What:** Conduct an annual inventory of laws and regulations that affect the organization.  
**Who:** Chief Compliance Officer  
**Deliverable:** Compliance Inventory  
**Due Date:** January 31, 2015  
**Status:** [A brief discussion of the status of this task]
2. **What:** Once the inventory of laws and regulations is complete, do a risk assessment that ranks which of them could most negatively impact the organization.  
**Deliverable:** A list of the high, medium, and low compliance risks facing the organization  
**Who:** Chief Compliance Officer  
**Due Date:** February 28, 2015  
**Status:** [A brief discussion of the status of this task]

Similar steps could be designed for steps 2-7. Another option is to organize these steps in an “action plan” table with Who, What, etc. as column headings.

## Conclusion

Today the requirements placed upon compliance professionals are numerous. The amount of data that needs to be understood, the people that need to be informed, and the monitoring involved can be overwhelming. However, getting organized can help—particularly using a technique that takes into account the process-oriented characteristics of compliance programs. Applying business process techniques to compliance can give an entity some of the tools it needs to design and implement a healthy, well-controlled, continuously improving internal compliance and ethics program. \*

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