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by Jeffrey M. Kaplan

Types of conflicts of interest

Jeffrey M. Kaplan (jkaplan@kaplanwalker.com) is a Partner with Kaplan & Walker LLP in Princeton, NJ.

Conflicts of interest (COIs) constitute one of the most pervasive risk areas in the compliance and ethics (C&E) realm and are a source of endless fascination for me. As editor of the *Conflict of Interest*



Kaplan

*Blog*¹ for the past six years, I've tried to focus on (among other things) accurately categorizing the various types of COIs. Take, for example, the case of apparent versus potential conflicts of interest. The two are often used interchangeably, but they have different meanings. The former generally refers to "existing situations or relationships that reasonably could appear to other parties to involve a conflict of interest...[whereas the latter generally refers] to situations that do not necessarily constitute or appear to constitute a COI but where there is a reasonable possibility of an actual or apparent COI coming into play...For instance, where A works at company X, which has as a supplier company Y, and A's daughter B is considering applying for a job at Y, this is not yet an actual or apparent conflict because B has not yet moved her job plans forward. But (depending on a variety of facts not provided in this example) the potential for a conflict is there."²

Why should those who draft, communicate, and enforce COI policies care about this distinction? Because allowing employees to wait until a potential COI has ripened into an actual or apparent one before requiring it to be disclosed might be too late to deal with the matter appropriately.

Another area where categorization matters concerns the distinction between individual and organizational COIs—with the former generally meaning conflicts between an individual and their employer and the latter means conflicts between an entity and its customers or others to whom the entity owes loyalty. The key takeaway here is that because they are potentially more consequential than individual COIs, organizational ones are often difficult to face and so should generally be built into a company's risk assessment protocol.

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A third area where categorization matters concerns bias and conflicts of interest. The "two are, of course, related to each other; but they also differ, in that the former can be based purely on thoughts (or feelings or beliefs) whereas the latter generally requires something truly tangible, such as an economic or familial relationship."³ As a general matter, the remit of a C&E officer to address COIs is broader than that concerning bias. One day that may change, but for now it may be prudent not to confuse the two. *

1. www.conflictsofinterestblog.com.
2. Jeff Kaplan, ed: "Apparent and potential conflicts of interest: what's the difference and why it matters" *Conflict of Interest Blog*, January 24, 2014. Available at <http://bit.ly/2BHbOOA>.
3. Jeff Kaplan, ed: "Compliance & ethics officers in the realm of bias" *Conflict of Interest Blog*, December 9, 2017. Available at <http://bit.ly/2DRvKUU>.