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# Conflict-of-interest policies and procedures

by Jeffrey M. Kaplan

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Conflicts of interest (COIs) have long been among the most common sources of compliance and ethics (C&E) risk. They have also long been of interest to me — particularly since, as much as any C&E risk area, they can be seen as existing "where law and ethics meet."

But effectively mitigating risks in this area can be quite a challenge. What should a company seeking to develop or enhance a COI C&E program focus on?

First, consider conducting a risk assessment for COIs. This need not be an elaborate undertaking, and for many companies, the main COI risks are largely the same: economic relationships (ownership or employment) with customers, competitors and suppliers (including gifts, etc.), and family employment issues. But a risk assessment will help determine the extent to which other risks — such as those arising from charitable activities — should be focused on as well.

Second, a COI policy should address not only actual and apparent COIs but also potential ones, which are not widely understood. A potential COI risk typically entails a situation that does not yet exist but is reasonably likely to come into being, such as where an employee is being considered for a transfer from a non-procurement role to a procurement-related one.

Third, one should consider implementing COI certifications. These can be either standalone or part of a larger (i.e., multi-risk) mitigation process. In many companies, certifications are required on an annual basis, but a less frequent cycle may be acceptable — so long as employees understand the need to disclose on a timely basis any meaningful changes to the underlying facts in the prior certification. Moreover, not all employees need be required to certify. It is generally sufficient to limit such requirements to those in higher-risk positions.

Fourth, companies should have training and other communications around COIs. In some (indeed, many) organizations, training for senior executives and the board should be tailored to risks most significant to them. The same is true of risky functions. And, companies may wish to consider developing communications designed to help managers understand how to handle COIs disclosed to them by their subordinates.

Finally, there should be a robust "checking" dimension to the program. This includes auditing to see if policies are understood and are being followed. It also includes monitoring of COIs that are — under company rules — allowed to exist subject to specified conditions.