Developing an Engaging Code of Conduct and an Effective Code Program

By Andrea Falcione, JD, CCEP and Renee M. Sophocles, JD, CCEP
Introduction

WHAT IS A CODE OF CONDUCT?
A Code of Conduct or Code of Ethics (Code) is a document that describes an organization’s principles, values, and standards for behavior. A Code sets forth the rules that the organization’s employees and other key stakeholders must follow when facing ethical dilemmas related to the workplace, such as conflicts of interest or the offering or accepting of gifts. Effective and engaging Codes focus not only on the legal risks that are applicable to the organization and its constituents, but also focus on the organization’s mission and “beliefs.” A Code should describe general principles about the organization’s values, goals, and overall ethical philosophy.

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WHY IS THE CODE AN IMPORTANT PART OF CREATING AN ETHICAL CORPORATE CULTURE?

A well-written, understandable, and widely disseminated Code is a first step toward creating an ethical culture. All organizations—large and small, public and private, for-profit and not-for-profit—should adopt a policy statement regarding legal and ethical conduct. The organization’s Code should be applicable to, and written for, all employees and representatives—not just those at the highest or lowest levels.

An effective Code will help employees and representatives understand how the organization’s values, mission, and principles integrate with their daily decisions, actions, and behaviors at work. A Code can have a major impact on an organization, unifying its employees and representatives with a common set of values and standards of professional behavior. It can engage and inspire employees and representatives to feel invested in the organization and its compliance and ethics efforts. A Code should help employees and representatives make ethical decisions, clarify gray areas, and instill trust and commitment to the organization’s values.

A meaningful Code also provides an invaluable opportunity for a responsible organization to further its positive public identity, leading to a more supportive environment and an increased level of public confidence and trust among important stakeholders. Together, these benefits can have a profound and positive impact on the culture of the organization.

An effective Code can and should:

- Build employee and stakeholder trust and confidence
- Increase awareness of ethical and legal issues
- Generate discussion about ethics and values
- Guide decision-making and daily business actions
- Encourage employees and representatives to seek advice and report ethical misconduct
IMPORTANCE OF THE OVERALL CODE PROGRAM, FROM DOCUMENT CREATION TO PROGRAM LAUNCH TO FREQUENT AND COMPELLING COMMUNICATIONS

Merely having a Code document is not enough—fulsome and consistent dissemination, education, and enforcement are also essential. Many companies distribute their Codes to new hires during the on-boarding process, which is a good start. It is not enough, however, to simply distribute copies of the Code—it must be part of your organization’s overall commitment to an ethical and compliant culture.

A Code should be an informative and useful teaching tool. It should not be a document that employees and representatives receive, but simply file in a drawer, not referencing it when questions arise. An effective Code and accompanying education and communications program (collectively, a Code Program) will encourage employees and representatives to become invested in the organization’s compliance and ethics efforts.

A Code is not meant to stand alone. It cannot address all of an organization’s risks, nor can it answer every ethical question or issue that may arise. Rather, a Code is one key element in a broader effort to prioritize compliance and ethics within an organization. For maximum efficacy, a Code must be part of a larger, organization-wide commitment to promote an ethical culture and full compliance with the law. This commitment should include a thorough and effective Code that is easy to read and understand, internal marketing of the Code Program, engaging and meaningful education, and periodic, compelling communications that remind employees and representatives of their personal responsibility to know and follow the Code. Additionally, organizations should require all employees and even business partners to certify that they have read the Code, understand it, and will abide by its guidelines. This practice should be undertaken annually to ensure all constituents are reminded of the importance of the Code and require they recommit to its principles.

As part of an effective ethics and compliance program, the U.S. Federal Sentencing Guidelines for Organizations (Sentencing Guidelines) require that an organization take “reasonable steps to communicate periodically and in a practical manner its standards and procedures, and other aspects of the compliance and ethics program” to all employees and agents (as appropriate) by requiring participation in training and by disseminating explanatory information.

Effective Code Programs rarely happen overnight, but the strategies outlined below will go a long way toward building a Code Program that fits your culture, holds the attention of your employees and representatives, and demonstrates your organization’s commitment to integrity.
Five Steps for Developing an Engaging and Effective Code Program

Following are five steps you should take when analyzing your existing Code Program and/or developing a new Code Program:

- **Step 1:** Re-assess and/or determine your organization’s culture and values
- **Step 2:** Periodically review your organization’s Code
- **Step 3:** Conduct a creative and engaging Code Program campaign
- **Step 4:** Conduct Code training and certification on a periodic basis
- **Step 5:** Ensure that your organization’s Code Program is continual and evolving

**STEP 1: RE-ASSESS AND/OR DETERMINE YOUR ORGANIZATION’S CULTURE AND VALUES**

1. Understand the importance of your organization’s core values and how your vision and mission statement should frame your organization’s Code

Organizational values are fundamental to an effective Code. Your organization should identify and express its values and feature them prominently in its Code. The Code should explain the meaning of the organization’s values and reinforce their importance in the context of your business. Clear definitions of organizational values will help employees and representatives to better understand and apply them in their daily activities. When possible, values should be tied to individual Code provisions, even serving as the framework for substantive content. If, for example, “Responsibility” is one of your organization’s key values, it could be tied to a Code provision outlining the duty to report ethical or legal violations.

Whether you are embarking on a Code update or drafting your organization’s inaugural Code, first determine your goals and identify what will constitute success for your Code Program. A Code is not effective as a stand-alone document—the true benefits come from the Code’s strategic use as a component of an organization’s broader compliance and ethics initiatives and its overall business goals. The Code should include thought-provoking questions and answers and real-world examples that resonate with your constituents and should encourage employees and representatives to actively and frequently use the Code to address their own compliance and ethics concerns and further the values of the organization.

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the Code’s strategic
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initiatives.
2. Set a tone for your Code Program that resonates within your organization and has the support of the executive leadership team

The support and commitment of organization leaders, including the executive management team and line management, is necessary for the success of a Code. It is imperative that you garner leadership support early in the process and broadcast that commitment to your entire organization.

Establishing the “tone at the top,” with a message from the CEO, clearly communicates the importance of the Code to the success of the business. Establishing the “tone from the middle” can be even more important and effective, however, as most employees look to their immediate supervisor or manager to clarify the organization’s position and to provide direction. Providing a training program tailored specifically for your management team to position the importance and value of the Code with their teams will provide additional reinforcement to your employees and will improve your adoption rates.

3. Know your audience

Organizations with the most effective Code Programs tailor them carefully to the organization and its people. Your Code—and its attendant marketing, training, and communications—should reflect your organization’s culture, tone, and workforce. A Code that is appropriate for an insurance company will not resonate at a manufacturing company and vice versa. Play to your audience: the Code and the Code Program should feel relevant to all employees and representatives.

4. Workshop your Code—gather inputs from attitudinal surveys, cultural assessments, and/or focus groups

Gather information from key stakeholders, such as executive leadership, managers, and employees from various departments, regarding your organization’s compliance and ethics concerns. Those individuals responsible for drafting the Code should not assume that leaders alone understand the issues that are important to the organization. Get input from a cross-functional group of constituents, including front-line employees. It is important to gather enterprise-wide insights from all levels within the organization by reaching out to various business units, functions, and geographies to provide a holistic view into the employees’ perspectives on the organization’s culture and its values.

Some effective information-gathering processes include online surveys, interviews, focus groups, and informal discussions. Information gathering, including cultural assessments, will often surface key issues within your organization and may help set
the stage for an ongoing, internal dialogue about compliance and ethics. In addition, by gathering information from a cross-section of the organization, you will send a message that the organization believes in compliance and ethics and values the views of its employees and representatives.

After conducting surveys, focus groups, interviews, and/or a formal cultural assessment, you should then analyze and synthesize the information that you have collected. What are the key compliance and ethics issues and concerns within your organization? What corporate values resonate with your employees? What suggestions do your employees and representatives have for creating a more useful, or even a more believable, Code? This information will help you develop an outline and should inform the content of your Code.

**STEP 2: PERIODICALLY REVIEW YOUR ORGANIZATION'S CODE**

When analyzing your Code, you should ensure that it:

- Addresses in suitable detail your organization’s major risk areas
- Follows the principles contained in the Sentencing Guidelines (in the case of U.S. organizations) and other applicable mandates (e.g., international stock exchange listing standards and applicable local and international laws)
- Incorporates a tone that reflects your organization’s culture and values
- Has a visually engaging design
- Uses clear, concise language
- Offers realistic, organization-specific questions and answers and scenarios
- Incorporates the latest developments in the laws and regulations that affect your industry
- Provides information about company policies and where to find more information
- Clearly outlines the resources available to all constituents to ask for guidance and report potential violations
1. Ask the right questions before getting started

There are many things to consider when drafting or updating a Code. Before adopting a Code or implementing a Code Program, ask and address questions such as these:

- Does your organization already have a Code?

- When was the Code last reviewed and/or updated?

- Is the Code accessible to all employees and representatives?
  - Is a hard copy distributed to everyone within your organization?
  - Is it available publicly (e.g., on the corporate website)?

- What are your organization’s language needs and translation priorities?

- Why are you doing this?
  - New goals and objectives?
  - Change in organization mission?
  - New management?
  - In response to a corporate scandal?
  - What are the business objectives and the goals of the overall Code Program?
  - What are the principal laws and regulations applicable to your organization?
  - What has gone wrong in the past and what could potentially go wrong in the future?

- What are the key risk areas within your business considering your industry, applicable regulations, organizational structure, and global reach?
  - What guidance must you offer to employees and representatives?
  - Where are there “gray areas?”

- How will you measure the Code Program’s success?
  - How will you know that your new Code and Code Program are making a difference?
  - What measurements will inform you that the Code and the Code Program are successful?
  - How will you baseline your current initiatives in order to measure your success?
  - Who will conduct the evaluations? Internal or external?
  - How often will you revise the Code and the Code Program in the future?
  - How will you adjust the Code and the Code Program as they evolve?

Your organization’s answers to these or similar questions will guide you through the writing or re-writing process and will assist in prioritizing your Code efforts.
2. Determine the strengths and weaknesses of your Code by benchmarking it against your peers and other “best-practice” Codes

Benchmarking your organization’s Code against the Codes of other organizations is a great way to kick off your Code project. Effective benchmarking will provide you with a good understanding of the strengths and weaknesses of your existing Code. It will also help you determine how your Code compares to those of industry peers and will give you ideas to incorporate into your revised Code. When benchmarking your organization’s Code, you should compile and analyze the Codes adopted by leading organizations from both within and outside of your industry.

Create a standard framework for analyzing and benchmarking each Code in a similar manner. When creating this framework, be sure to (i) assess those topics covered—and not covered—in each Code, (ii) consider the policies, practices, and procedures that indicate how each organization distributes, communicates, explains, supports, and updates its Code, and (iii) include qualitative analysis of tone, readability, style, presentation, management, and implementation of the Codes.

A “best practice” Code should, at a minimum, include the following elements:

- Letter(s) from executive leadership
- Table of contents
- Introduction and explanation of the organization’s core values
- Code provisions covering substantive risk areas that apply to the organization
- Contact information and resources, including a clear explanation of where to go to report Code violations
- Anti-retaliation policy
- Information on specific company policies and instructions on where to find them

After analyzing Codes and completing your benchmarking efforts, assess the strengths and weaknesses of your Code and plan your ongoing efforts accordingly.
3. Determine whether your Code needs to be re-written or simply updated, and envision and deliver on your organization’s Code design and layout

After benchmarking, you should next determine whether to re-write your organization’s Code in whole or in part. There will be occasions—significant changes in your business, major merger and acquisition activity, or simply the need for a more engaging Code that is better in line with your organizational goals—when it makes sense to completely revamp your existing Code. You should undertake this type of comprehensive review approximately every three years. Other times, a simple update to reflect changes in the law will suffice. Consider the need for legal updates on an annual basis and implement them as and when necessary.

Consider a “design conference.” Bring together a number of internal stakeholders who will use, interpret, and enforce the Code, and seek consensus on the overall tone, voice, structure, and key messaging of your Code. At the design conference, discuss how to reach the right balance between behavior and values on the one hand, and compliance and rule-enforcement on the other. Consider the degree and extent to which your organization will use the revised Code to communicate important information about your organization’s compliance and ethics processes (e.g., making reports, asking questions, getting advice, cooperating in and conducting internal investigations, and prohibiting retaliation), as well as substantive guidance about specific types of risks.

Think about design early on in the drafting process, envisioning what the end product will look like. Consider usability, readability, length, and brand identification. Take into account the type of design and layout that will work best for the majority of your constituents. The appearance and style of your organization’s Code will impact its adoption by your employees and representatives—a visually appealing Code is typically a more effective Code.
The best Codes combine many—if not all—of the following characteristics:

**Appearance and Style**—The Code should be visually appealing and user-friendly. Although some Codes contain only text, with minimal formatting and structure, the best Codes incorporate pictures and/or graphics, make use of color or corporate branding, and have a sophisticated layout and design.

**Audience**—The Code should apply to all employees, including executive management, and to the board of directors. An increasing number of Codes also apply to subcontractors, suppliers, agents, and/or consultants.

**Availability**—The Code should be available on both the organization’s Internet and Intranet sites. Information about reporting mechanisms, such as hotlines and weblines, and contact information for the Compliance/Ethics/Legal/Human Resources Department(s), should be similarly available. There is immense value in broadcasting a Code: it shows the world that the organization embraces both ethics and compliance with the law.

**Certification**—The Code (and the Code Program) should include an annual certification to document that employees and representatives have read, understand, and agreed to abide by the organization’s standards of conduct and expectations.

**Content**—The Code should clearly define expectations and guidelines for professional conduct and behavior for all employees and representatives. It should outline behavior that is deemed non-compliant and the disciplinary actions that may result from such behavior (e.g., warning, suspension, termination). Effective Codes do not simply repeat the content of stand-alone policies and procedures, but instead make reference to such policies and procedures, as appropriate.

**Languages**—The Code should be available in the languages appropriate to meet both employee and organizational needs. Availability in multiple languages not only ensures comprehension at every organizational level and location, but also evidences the organization’s commitment to the Code and its importance as an organization-wide resource.

**Learning Aids**—The Code should incorporate questions and answers, frequently asked questions, case studies, and other learning aids designed to engage the reader and to facilitate understanding of the Code. Scenarios may emanate from actual examples reported via the organization’s helpline or webline.
Length and Readability—The Code should be easy enough to read, using active voice, clear terms, and direct phrasing. The Code's length should be dependent on the type of organization (e.g., public versus private; heavily regulated versus unregulated; for-profit versus not-for-profit). A Code that is too brief may fail to cover important topics, while a Code that is too long may be difficult for employees and other representatives to read and absorb.

Tone—The Code should be written with the specific goals of the organization in mind. There are three major Code archetypes: Legalistic, which purports to set forth rules; Educational, which teaches principles; and Aspirational, which has an inspirational goal. A tone that is right for one organization may not work for another. Picking the wrong tone or one that is not reflective of the organization’s culture, can cause employee cynicism and negatively impact the Code’s adoption.

Updates—The Code should be updated on a timely basis to not only reflect changes in laws or social expectations, but to also reflect changes in corporate structure, the employee population, or the organization’s business purpose.

Keep these features in mind when assessing your Code and consider whether a general Code will be sufficient to cover all of your organization’s constituents, at all locations. Although it may be preferable to adopt one policy that will apply to your organization worldwide, more specific Codes articulating standards applicable to particular groups or locations may work better in your particular situation.

Finally, consider the level and extent to which internal reviews and approvals will be required at your organization. Seek the involvement and approval of key stakeholders throughout your organization—such as Legal, HR, Compliance, and executive management—throughout the Code drafting or re-write process.

STEP 3: CONDUCT A CODE LAUNCH AND PROMOTE YOUR ORGANIZATION’S CODE THROUGHOUT THE YEAR

Widespread credibility for your Code and your Code Program requires a clear commitment from all levels of management. Many successful Code Programs include “tone from the top,” advance marketing that can be as simple as an introductory letter from senior management preceding the Code launch, or as sophisticated as a video presentation from your organization’s CEO. You should communicate that the Code applies to everyone at the organization—including the highest levels of management. Effective Code marketing will foster willingness on the part of employees and representatives to ask questions, raise concerns, and do the right thing—even when under pressure.

To fully market your Code, consider enlisting your marketing department or hiring an agency or firm to help you create a branded program, together with a logo and tag line designed...
to ensure the Code Program resonates with employees and other representatives. Ideally, your organization’s Code should include creative graphics, and you should publish it in many formats, including in hard copy and on the web. Although some employees and representatives will prefer a hard-copy version of the Code, others will be more likely to use an online, searchable document that is accessible from anywhere.

Create a Code communications package which may include:

- Posters and table tents
- Wallet cards
- Desk-top reminders, including pens, notepads, and/or mouse pads
- Online tools, such as:
  - A tone-at-the-top video from the CEO
  - HTML email messaging
  - Engaging, short interactive communications
  - A Code portal and intranet site
  - An intranet banner with a link to a Code portal

Think of engaging ways to kick off your Code Program and to keep employees and representatives involved in and aware of the Code Program throughout the year.

**STEP 4: TRAIN PERIODICALLY ON YOUR ORGANIZATION’S CODE**

Code training for employees and representatives should be conducted on at least a bi-annual basis, with more frequent, semi-annual reminders about the Code, employees’ responsibilities, and available resources.

In-person Code training can accomplish many important objectives. It’s a great way to demonstrate an ethical culture and management’s support for the Code. It also provides an opportunity for employees and representatives to ask questions and to meet your compliance and ethics team. The best in-person training is both educational and engaging. In-person training, however, is inefficient and incomplete. First, it is virtually impossible, from a logistical perspective, to drive in-person training to all employees and representatives, at all locations, in all languages, on an ongoing basis. It is also prohibitively expensive to do so. From a practical perspective and for a complete solution, online education should supplement in-person training for appropriate audiences. Neither in-person nor online training is a perfect solution, but they are certainly complementary.
Employee feedback can be very useful in assessing the effectiveness of both your Code and your Code training. If you hear that one or both is too long, too simple, or off-base, reexamine the answers to your “getting started” questions and reconsider your organization’s Code in the context of your best-practice benchmark. Contemplate updates or changes to better reflect your organization, your culture, and your audience. Include an end-of-course survey to garner feedback throughout the year and provide insight for your annual review process.

Additionally, position your compliance program and Code training as professional development. Corporate integrity is a professional skill—one that will only become more important over time. Understanding policies, embracing ethics education, and taking compliance seriously is not just good for business—it’s good for employees and will serve them well in their careers. Do not position your training as a mandatory, “check-the-box” activity but rather as a valuable skill development program.

**STEP 5: ENSURE THAT YOUR CODE PROGRAM IS CONTINUAL AND EVOLVING**

Your organization’s Code Program should continually evolve. In a large, global organization, employees and other representatives will face ethical or legal dilemmas every day. In such a complicated environment, distributing the Code annually is simply not enough. For maximum effectiveness, the Code must be a living, breathing document—one that employees and representatives remember and periodically consult.

Consider your organization’s Code a brand, and borrow a marketing approach to brand maintenance. Organizations with the strongest brand reputations, such as Coca-Cola or NIKE, take every opportunity to keep their names on the tips of consumers’ tongues. Brand awareness doesn’t always have to be extensive—sometimes, just a mention can be enough. Be sure your corporate communications group weaves the organization’s ethics and values into your CEO’s regular internal and external messaging. Your employees and representatives are busy and face a lot of distractions. They won’t keep your organization’s Code in mind unless they hear about it often. Periodic communications are the key to reminding employees and representatives about your organization’s values, its reporting mechanisms, and the anti-retaliation policy.
and representatives about your organization’s values, its reporting mechanisms, and the anti-retaliation policy.

Remember that “variety is the spice of life.” Deploying engaging, relevant Code education is essential. Repeating the same education on a year-over-year basis is ill-advised, however. By providing a variety of communications and experiences, employees and representatives will be more engaged and more invested in the Code and in the Code Program as a whole. Your goal is for employees and representatives to understand the Code’s relevance in their day-to-day work, and for them to embrace the Code and utilize it when making everyday business decisions.

**Conclusion**

Writing or re-writing your organization’s Code can be a difficult and time-consuming, but important and rewarding, project. When designing your Code Program, be sure to re-assess and/or determine your organization’s culture and values; periodically review your organization’s Code; conduct a creative and engaging Code Program campaign; conduct Code training; and ensure that your Code Program is continual and evolving.

Whether your Code is values based, rules based, constituency based, or a hybrid will depend, in large part, on the culture of your organization and the sophistication of your program. The overall tone, style, and design are similarly dependent on your organization values and your employee base. Be sure to seek input from a cross-functional team. Involved employees and representatives are invested employees and representatives, and different stakeholders will bring different viewpoints and perspectives to the project.

By following the recommendations set forth above, your Code and your Code Program will be ultimately satisfying, positive, and effective endeavors in your compliance and ethics career.

When creating or revamping your organization’s Code and your Code Program, remember to:

- Provide visual interest—go for the look and feel of a practical handbook, rather than that of a legal document
- Organize content for clarity and ease of use
- Cross-reference relevant policy documents
- Highlight additional resources
- Make extensive use of examples, questions and answers, and other aids to decision-making and responsible conduct
About SAI Global Compliance

SAI Global Compliance is the world leader in providing organizations with a wide range of governance, risk and compliance (GRC) products, services and technology that help build organizational integrity and effectively manage compliance risk. Our global staff includes professionals and subject matter specialists in advisory services; program design, management and implementation; instructional design; and software development. Our focus is to help establish and enhance compliance effectiveness.

With well over a thousand organizations as clients and tens of millions of satisfied users around the world, we work with clients to integrate a flexible suite of solutions and services specifically tailored for a business and industry. Our products include the world’s largest library of compliance and ethics learning, Code of Conduct advisory services and training, and the Compliance 360® GRC Software Suite to manage compliance, policy, incident and audit management. Our Cintellate™ EH&S Software addresses key issues in operational environmental health and safety management. For more information, please call us at the full service location nearest you or visit www.saiglobal.com/compliance