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Effective approaches to stakeholder pushback

by Frank Sheeder

At the core of every successful organization is a robust compliance program that not only ensures adherence to applicable standards but also fosters an ethical corporate culture. Navigating the compliance landscape demands a sophisticated blend of understanding, strategy, and foresight, as it involves multiple stakeholders with unique interests and perspectives. This complex interplay of interests often results in pushback against new or ongoing compliance initiatives, issues, and processes. Understanding and managing this pushback effectively is critical for ensuring smooth implementation of the elements of an effective compliance program and enhancing the overall integrity of the organization.

The objective of this article is to delve into the intricate subject of stakeholder pushback by first observing some common aspects of pushback and then offering pragmatic steps to deal with it. By addressing the multiple facets of this phenomenon—stakeholder interests, the reasons and ways in which pushback occurs, strategies to counter resistance, and methods to reinforce compliance despite the opposition—the aim is to offer in-depth guidance for compliance professionals. Compliance professionals equipped with the knowledge and tools necessary to navigate this challenging landscape can ensure a more effective, efficient, and trouble-free operation of their compliance functions. This topic is often overlooked or discussed quietly. Perhaps this article can contribute to a broader discourse on effective approaches to stakeholder resistance to compliance efforts.

The complexity of stakeholder pushback

Compliance is a shared responsibility at every level of an organization. It involves a broad spectrum of participants—each with unique experiences, roles, responsibilities, and perceptions. When they are combined, they create a multifaceted, complex compliance landscape. Stakeholders encompass everyone from employees at the lowest level to executive leadership, board of directors, patients, and other external stakeholders like the public and government regulatory bodies.

Given this diversity, it is not surprising that stakeholders hold varying interpretations of the role and importance of compliance programs and professionals, and sometimes choose not to accept compliance measures. These instances of resistance, or stakeholder pushback, are driven by a range of factors, including differences in perception, misunderstandings, perceived inconveniences, potential threats to their position or an agenda, or an assessment that the costs (financial, operational, etc.) of compliance outweigh the benefits. Such pushback can take numerous forms, ranging from passive resistance to active opposition to reluctance or delay in accepting change, lack of participation in mandatory training sessions or other activities, failure to cooperate in compliance processes, or even vociferous criticism of the compliance program or compliance professionals. Each form of resistance presents its unique challenges and requires specific strategies to handle and transform this resistance into acceptance and active support for compliance initiatives.

Decoding the compliance landscape: A multitude of stakeholder interests

To manage pushback effectively, it is imperative to first understand the diverse interests and motivations of the stakeholders involved. Each group of stakeholders—which include senior leaders, board members, legal advisors, compliance officers, government representatives, individuals raising issues (often whistleblowers), and those found responsible for noncompliance—hold distinct interests which significantly influence their views and behaviors regarding compliance issues.

Senior leaders, for example, often find themselves balancing a variety of concerns like business or operational interests, ethical considerations, reputational risks, cost management, and stakeholder relationships. They usually strive to do the right thing and to resolve issues swiftly. They often wish to manage the message, protect the organization and its people, and ensure accountability. Sometimes, however, they may hesitate to acknowledge or accept responsibility, perceive compliance initiatives as overly expensive or disruptive, or fear the negative repercussions of publicized noncompliance. When noncompliance arises, some might encourage compliance professionals to "fix it and forget it."

Board members often share similar concerns as senior leaders, but from a narrower perspective. Their understanding of compliance issues is often more limited, leading to their reliance on senior leaders for information and advice. Their primary concern is protecting the organization and their reputations, and they are acutely aware of the potential for community backlash. They do not like surprises. Compliance professionals may be put in an awkward position when they are prevented from communicating with the board or committee chairs, especially when they feel leadership is not providing the full picture to the board.

Legal advisers and compliance professionals are entrusted with the dual responsibilities of acting ethically while safeguarding the organization and maintaining substantive and procedural integrity. They often face stakeholder complaints that they are being overly cautious or unnecessarily increasing the organization's risk profile. They need to ensure effective communication, active engagement, and implementation of appropriate remedies that mitigate organizational and individual legal, financial, and reputational risks. Some organizations have not effectively defined their respective legal and compliance roles, which can lead to tension and misunderstanding between these professionals. The best practice is for legal and compliance professionals to develop protocols and informal understandings about how they will collaborate on key compliance issues. This is particularly important when there is a need to establish attorney–client privilege or attorney work product protection in a specific matter.

Government representatives are typically driven by a desire to enforce compliance, demonstrate results for their efforts, and set precedents and examples by penalizing noncompliant organizations. Their mission is to serve the public interest and protect government programs. However, stakeholders can sometimes perceive their approach as overzealous, biased, or devoid of specific industry knowledge, leading them to pursue marginal cases—especially when they are heavily invested. This tendency to demonize regulators and enforcers usually makes compliance processes more difficult and can skew stakeholder objectivity.

Those who raise issues or whistleblowers have their own set of expectations. While they expect the organization to act ethically, their perceptions of what that means may be distorted, overly enthusiastic, or unrealistic. They might assert their complaint was ignored or that the organization did not do enough in response. They often wish to be central to the investigation process and may be disruptive. Because they may enjoy legal protection from retaliation, compliance professionals must deal very carefully with complainants to avoid collateral legal consequences.

Lastly, individuals found responsible for noncompliance, or wrongdoers, typically try to avoid or deny accountability. They may seek legal coverage or involvement in the investigation process. The extent to which they are kept informed during investigations can vary. They may also be entitled to certain legal protections, particularly if they hold senior roles.