

Corporate Integrity Agreements Mandate Boards to Retain “Compliance Experts”

By [Richard Kusserow](#) | May 2016

For several years, the OIG has gradually modified and enhanced CIAs to increase oversight and accountability of entities that agree to settlement terms, such as adding requirements for executives and boards and requiring Certifications of Compliance. A very significant trend has been to mandate that Boards engage a Compliance Expert to assist them in meeting their compliance oversight obligations. [Compliance Experts](#) must have expertise in Federal health care program compliance requirements. They are, in turn, obligated to create a work plan and a *Compliance Program Review Report*. The Report focuses on the mandated review and recommendations. A copy of the Report must be included in each Annual Report. Copies of materials provided by the Compliance Expert to the Board and Board meeting minutes must be made available to the OIG upon request. This should not surprise anyone that has been following the OIG’s publicly stated positions on the subject.

Movement towards Increased Board Accountability Continues to Progress

[Tom Herrmann, JD](#), who spent over 20 years in the Office of Counsel to the Inspector General, states: “This is not new. For decades, the OIG has advised that an effective Compliance Program begins at the top with the Board and flows down through the executive leadership and Compliance Officer to all employees.” Mr. Herrmann noted that since 2003, the OIG and American Health Lawyers Association (AHLA) have issued three communications that underscore the duties and responsibilities of a Board in overseeing an organization’s Compliance Program. The first, released in 2004, was [“An Integrated Approach to Corporate Compliance: A Resource for Health Care Organization Boards of Directors,”](#) followed in 2007 with [“Corporate Responsibility and Health Care Quality: A Resource for Health Care Boards of Directors.”](#) Most recently, in 2015, the OIG published its [“Practical Guidance for Health Care Governing Boards on Compliance Oversight,”](#) developed in conjunction with the AHLA, HCCA, and the Association of Healthcare Internal Auditors (AHIA).

Another expert on the subject is [Steve Forman, CPA](#), who has more than 20 years of experience as a Compliance Officer, compliance consultant, and OIG executive. Mr. Forman has served as a Board engaged Compliance Expert on multiple occasions. Mr. Forman believes that the Practical Guidance provided significant insights concerning the OIG’s views on the Compliance Expert’s role in assisting the Board to meet its CIA obligations. Mr. Forman observed that “the document provides almost identical language about Boards’ use of [Compliance Experts](#) from this Practical Guidance as today’s CIAs do. The OIG urges Boards to use the advice of experts in fulfilling their duties. The OIG has been very clear that it sometimes requires entities under a CIA to retain an expert to [assist the Board in fulfilling its responsibilities under the CIA](#). Now, we see that the OIG is following through on this as a common standard for CIAs.”



The Practical Guidance has gone further than the language found in CIAs, stating that [Compliance Experts](#) can assist Boards and management in a variety of ways, including the identification of risk areas, provision of insight into best practices in governance, or consultation on other substantive or investigative matters. The takeaway is that Boards should have compliance expertise available to make sure they meet all their fiduciary duties and obligations in overseeing corporate compliance.