

Compliance Experts

Key Points:

- **Understanding the meaning of Compliance Experts is important**
- **Compliance Experts have taken on new meaning and significance with OIG CIAs**
- **Weak Board-level oversight may result in mandated engagement of Compliance Experts**
- **Best practice is for Boards to have either a Compliance Expert as a member or engage one**
- **It is a conflict of interest for the Compliance Officer to serve as the Board-level Compliance Expert**

By definition, a Compliance Expert is someone who has comprehensive, authoritative, and extensive knowledge and experience with compliance programs along with applicable laws, regulations, and policies. When engaged, they are responsible for monitoring and documenting compliance activities, advising leadership and management on compliance matters, and acting as a liaison with government agencies.

The Department of Health and Human Services Office of Inspector General (OIG) has a long history of calling for Boards to engage Compliance Experts. The [“Practical Guidance for Health Care Governing Boards on Compliance Oversight,”](#) jointly produced by the OIG, the Association of Healthcare Internal Auditors, the American Health Lawyers Association, and the Health Care Compliance Association, promotes the use of independent Compliance Experts by Boards to assist in evidencing an effective compliance program and ensure the Board meets all of its oversight fiduciary duties and obligations. The Department of Justice (DOJ) has likewise expressed interest in the availability of compliance expertise in its June 2020 [Evaluation of Corporate Compliance Programs](#) guidance.

Compliance Experts have taken on added meaning with the OIG mandating in [Corporate Integrity Agreements \(CIAs\)](#) that Boards of Directors engage these experts. Provisions requiring

Compliance Experts have been added to CIAs when the OIG finds inadequate oversight and support at the Board level. Compliance Experts are to assist Boards in meeting all the requirements of the CIA. All members must personally [certify in writing](#) this has been accomplished.

Adding these provisions is a “game-changer” for Boards because they place a heavy personal burden on members. A false certification carries serious stipulated penalties and potential violations of law (see, for example, [18 U.S.C. §1001](#)) for providing a materially false statement to a federal government agency. It is, therefore, advisable to educate the Board on their Compliance Program oversight fiduciary obligations and the personal risks for failing to meet them.

Boards should not run the risk of an encounter with the DOJ and OIG that would question their performance in meeting their compliance oversight fiduciary duties and responsibilities. They should take steps to either engage a Compliance Expert to assist in asking the right questions, assessing answers, reviewing needed compliance resources, ensuring program managers are meeting their ongoing monitoring responsibilities, and evaluating program performance. Some Boards meet these needs by having at least one member who is a [Compliance Expert](#); however, many Boards engage an external Compliance Expert to provide compliance advisory services as needed. This is a role that Compliance Officers cannot meet, as it would be a conflict of interest.

For more information on this topic, contact Richard Kusserow (rkusserow@strategicm.com). His firm has a long history of providing Compliance Experts to Boards of Directors.