

# Updating Your Code of Conduct A Step-by-Step Approach

By Edward Petry, Vice President, Advisory Services, NAVEX Global

## Your Code of Conduct – A Missed Opportunity?

Imagine if you had the opportunity to reach out to every one of your employees, business partners and regulators to explain your organization's values and commitment to integrity in a clear and concise way. What if this was also an opportunity to let leadership set the ethical tone at the top, and to inform employees and other stakeholders on how to ask questions or report problems within your organizations?

Of course, each of us already has this opportunity – it's our Code of Conduct. While we all may understand the value of our codes of conduct, the reality is that codes often fall short. In many cases, codes of conduct remain an under utilized asset and a missed opportunity.

Over the last twenty years NAVEX Global's Advisory Services team has conducted employee surveys, interviews and focus groups to gather information about perceptions of codes of conduct and how they can be improved. Consider the following comments from employees – and ask yourself "could these be comments from our employees about our Code?"

### WHY DOES YOUR COMPANY HAVE A CODE OF CONDUCT?

- "I suppose they're required to, but it's just CYA."
- "Our Code is from the Compliance Office, you know, they're the people who 'say no.' The Code is the lawyers' list of what I can't do."
- "The Code is the company's way of being on the record that they've told me all the reasons I can be fired."
- "Our Code? ... I never give it much thought ... except when I have to certify."

### ...AND WHEN THEY DO HAVE STRONG OPINIONS, THEY'RE OFTEN NOT POSITIVE:

- "I wish they would just tell me what I need to know, our Code isn't useful or practical ..."
- "We take pride in being a leader in the industry, but our Code isn't anything to be proud of."
- "The information is outdated and hard to find... I never use it."
- "The topics don't track with what I see every day as actual issues. It doesn't apply to me."

In addition to conducting surveys, interviews and focus groups, our Advisory Services team has also benchmarked and evaluated hundreds of codes of conduct from nearly every industry. Again and again, too many codes make the same common mistakes:

- Key risk areas are omitted or haven't been recently updated.
- The writing style is far too wordy and overly legalistic.

- The Code is not well-organized or user-friendly.
- The design and presentation do not adequately convey the importance the company places on ethics.

## IT DOESN'T HAVE TO BE THIS WAY

Developing a successful and up-to-date code is one of the most cost effective ways of communicating to all of your various audiences about your ethics and compliance standards and expectations. And, not only is a code itself a valuable communications tool, but – if done right – the process of updating and drafting a new code can result in important benefits.

In short, if you haven't updated your Code of Conduct recently, you may be missing out on an excellent, economical opportunity to jump start and better position your ethics and compliance program.

Follow these step-by-step instructions to update your Code and leverage both the process and the roll-out to maximize the benefit for your ethics and compliance program.

## 1. Make the Case for a New Code

### THE REGULATORY REQUIREMENTS

One of the common obstacles many ethics and compliance officers face is convincing leadership that a new code should be a priority. When making the case, don't assume that leadership fully appreciates the current compliance and regulatory landscape. You may need to inform them that, since 1991 (and amended in 2004 and 2010), the U.S. Federal Sentencing Guidelines have established the basic requirements for an effective ethics and compliance program, including the need for a risk-based code that is consistent with industry practices. This requirement has since been updated and incorporated into regulatory, industry-specific and international best practice guidelines.

Why? Codes are universally required because **they are understood to be the foundational document for any company's ethics and compliance program.** A code:

- Communicates expected behaviors for employees, and points the way to additional resources when situations are complex, difficult or sensitive.
- Reduces legal liability by addressing the company's key ethics and compliance risks.
- Represents the company's commitment to integrity to external constituents including business partners and regulators.

### REQUIREMENTS FROM POTENTIAL BUSINESS PARTNERS

The last bullet point noted above is critical and especially important when making the case to senior leadership. Increasingly, as part of due diligence and bidding and procurement processes, organizations are being required to demonstrate that they have an ethics and compliance program, and first and foremost they are being asked to share their Code. In these cases, the expectation is that the Code will at least be comparable to industry norms, though in some cases the bar is higher.

### THE VALUE OF AN INDEPENDENT APPRAISAL OR BENCHMARKING

If your Code is outdated or you believe it is otherwise deficient, demonstrating how your Code compares to industry and best practice norms can be an effective way to build a case that a new code is needed. It is also an excellent way to determine where you stand and how much work will be needed to improve your Code.

## BUDGET & RESOURCE QUESTIONS

When making the case to senior leadership, it's often best to tackle the budget issue head on. While your Code can be developed entirely using in-house resources, many ethics and compliance officers are pleasantly surprised to learn that scalable code services can provide everything from editing assistance, to complete drafting and design.

The scalable options are not only budget friendly, but they also help address concerns about resource allocation. Developing a new code need not be an all-consuming effort that ties internal resources for weeks or months. Our experience has shown that allowing clients to select from a menu of scalable code services provides the means to complement their available personnel while adding additional expertise when needed.

## 2. Assemble Your Team

Don't rush the prep work. There's nothing more discouraging than being two months into the code development process only to discover that a key decision-maker disagrees with the overall approach or tone. Get consensus from the start.

## 3. Determine Code Content with a Risk & Gap Assessment

Once your team is assembled, and before drafting begins, the next step is to determine the scope of your Code's content. You can certainly begin with the content of your current Code and other relevant document results of the benchmarking you've completed. But it's also important at this stage to step back and review your organization's ethics and compliance risk areas. In effect, this step in the code development process is equivalent to an ethics and compliance risk and gap assessment. Your new Code should not only include topics you've included in the past, but it should also identify emerging risk areas and any gaps that need to be better addressed by the Code, policies, training and oversight.

## 4. Select a Writing Style & Design that Reflect Your Culture & Priorities

Once you have agreement on content, the next step is to select an overall architecture or structure. Develop a sample table of contents and decide if your topics will be grouped by stakeholders, your values or by topic area.

Consider the sequence of topics within your Code? The order of topics matters. Ask yourself, "what will employees think if 'Respect for Employees' looks like an afterthought at the back of the Code?" And remember, the goal is to create an organizational structure and sequence of topics that is intuitive and makes information easy to find.

Another critical step in any code development project is design. Thinking about the design of your Code from the point of view of the user. It should not only provide links to policies, but also engage the user with video, Burst Learning vignettes, and infographics – all within a simplified interface.

This approach can transform codes into a tool for awareness and training that is actually used by the employee when they have a question – which is when they are most open to learning. This saves valuable employee and management time in the long run.

## 5. Draft the Code & Manage the Review Process

As you begin drafting, set realistic expectations. From start to finish, the development of a new code can take anywhere from six weeks to six months. The difference is almost entirely due to how well the review and editing process is handled. You know your organization. Plan enough time for key leaders and subject matter experts to review drafts and provide feedback. Create a timeline. Identify in advance all those who will need to be involved without allowing the process to become unwieldy or an exercise in endless second guessing and word-smithing.

## 6. Make the Most of the Code Launch

At the outset of your code development project, it is a good idea to think ahead and determine how best to launch your new Code. You may already be thinking about a coordinated awareness and communications campaign with posters and emails or the development of a new training program to coincide with the release of the Code. Those are good first steps, but consider going further and developing an overarching two-year communications and training plan that includes tie-ins to the new Code. It's less likely that the Code will be forgotten and left on the shelf if it is continually incorporated into training. For example, if you conduct live training, managers or trainers should be encouraged to refer to specific pages and passages in the Code whenever they are making a point about company policies.

Branding the ethics and compliance office/programs with a specific look and feel, as well as using that branding in the Code's design and as a template for presentations will also help reinforce messages.

### REMEMBER TO INCLUDE THIRD PARTIES IN YOUR ROLLOUT

It's likely that you've included a statement in your new Code explaining that third parties are expected to abide by the spirit of the Code, to have in place their own comparable standards and policies and are expected to meet all contractual obligations. In addition, you may have included an explanation of specific responsibilities for managers to help ensure that third parties understand their responsibilities and are held accountable.

At NAVEX Global, we always rely on the insights we gain from research and our continuous discussions with our 12,500+ clients. We will continue to provide thought leadership, facilitate open dialogue and encourage the sharing of best practices on codes of conduct and other governance, ethics and compliance topics. We know that the best insights and the most valuable advice come from conversations with our clients.

### ABOUT THE AUTHOR

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**Edward Petry, Vice President, Advisory Services, NAVEX Global**

Ed Petry, Ph.D., is vice president, NAVEX Global's Advisory Services team. Ed joined the organization in 2004 after almost ten years as executive director of the Ethics and Compliance Officer Association (ECO). Ed served on the Advisory Panel to the U.S. Sentencing Commission, which was responsible for the 2004 revisions. Earlier in his career he was a tenured professor of ethics and a prolific author and researcher. While others may claim to know best practices, Ed's work with the ECOA and the Sentencing Commission actually helped establish those practices, as well as the standards by which they are measured. At NAVEX Global, Ed applies his more than 25 years of experience to help companies assess their ethics and compliance programs. He has also written many of the most admired codes of conduct for companies worldwide across nearly every industry.

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### ABOUT NAVEX GLOBAL

NAVEX Global's comprehensive suite of ethics and compliance software, content and services helps organizations protect their people, reputation and bottom line. Trusted by 95 of the FORTUNE 100 and more than 12,500 clients, our solutions are informed by the largest ethics and compliance community in the world.