Above Board: Compliance, Legal, and Financial Best Practices

The CDFI Fund's Capacity Building Initiative
Building Native CDFIs' Sustainability and Impact II (BNCSI II)

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Module 1 – Course Overview

Native Community Development Financial Institutions (Native CDFIs) offer a range of financial products and services to meet client demand for capital in their target markets. Legal obligations for all nonprofits can be confusing, and financial obligations, especially for Native CDFIs that have more complicated capital and funding structures than other nonprofits, can be daunting.

Compliance is one of the least talked about yet widest reaching issues for nonprofit organizations, including Native CDFIs. Weak or nonexistent compliance processes have the potential to jeopardize your funding and your reputation in your community, effectively limiting your impact. This course is designed to demystify compliance by provoking thought and facilitating conversation. Course material will focus on providing knowledge and tools to help Native CDFIs implement best practice compliance and risk mitigation processes to ensure you continue to meet the financial, legal, and other compliance-related obligations. This workshop is designed so you can have continued community impact.

This curriculum – **Above Board: Compliance, Legal, and Financial Best Practices** – is designed to help Native CDFIs build and grow their knowledge as it relates to compliance while providing concrete steps to strengthen compliance programs and protect their organizations from undue risk.

- **Day One** of the course covers the high-level what, why, and how of compliance.
- **Day Two** looks closely at internal controls and risk assessments—two key tools in a good compliance toolbox.
- **Day Three** covers the basics of a strong grants management program and provides a refresher on compliance with CDFI certification and award requirements.

This interactive course, structured to facilitate peer knowledge sharing and learning, provides an opportunity for participants at all levels of readiness to gain clarity on an often-confusing topic.

Learning Objectives

By the end of the training, participants should be able to:

1. **Explain** why and how to create a successful compliance program at your organization.
2. **Describe** how an effective control system provides reasonable assurance for the safeguarding of assets, the reliability of financial information, and compliance with laws and regulations.
3. **Outline** how to conduct a risk assessment and use it to mitigate and control risks.
4. **Explain** the importance of implementing a process and mechanisms designed to ensure that your compliance program is effectively communicated to all employees.
5. **List** the key competencies and best practices that characterize effective grants management, so your organization can identify your own strengths and opportunities for improvement.

6. **Describe** effective practices in meeting compliance and reporting requirements for your Annual Certification Report (ACR) and CDFI Fund Native American CDFI Assistance Program (NACA) Financial Assistance / Technical Assistance awards.

Module 2 – The Fundamentals of Compliance

What is Compliance?

Compliance is the process of making sure your CDFI and employees follow the laws, regulations, standards, and ethical practices that apply to your organization. Effective corporate compliance will cover federal, state, and tribal laws as well as internal policies and rules. Strong tribal governments are crucial to the economic development and improvement of daily life for people living in Indian Country. Administering compliance policies will help your organization prevent and detect violations of rules and greatly reduce the possibility of fines and lawsuits.

What Does Compliance Mean for your Organization?

In general, compliance in the workplace involves two important areas:

1. **Regulatory Compliance:** the steps an organization takes to comply with relevant external laws, regulations, and guidelines.
2. **Corporate Compliance:** the actions and programs an organization sets in place to ensure compliance with internal policies, procedures, and accepted behavior, as well as external regulations.

What do these measures look like in practice? Examples include your organization's written values, ethics policies, employee handbook, and procedures for complying with legal obligations (such as taxes and corporate reporting). When well-designed and implemented, these practices prevent and detect violations of applicable law, regulations, rules and ethical standards by employees, contractors, and others.

Corporate compliance also lays out expectations for employee behavior, helps your staff stay focused on your organization's broader goals, and helps operations run smoothly. This process should be ongoing. Most organizations establish a corporate compliance program to help govern policies and compliance. To be successful, your organization must take steps to make sure every staff member is complying with internal policies and rules you put in place. In most CDFIs, compliance tends to reside, informally, within the functions of the executive director and fiscal staff.

Common Subject Areas of Compliance for Nonprofits

Each state has its own set of requirements. However, Tribal governments are sovereign governments that operate apart from state or federal governments. Although each federally recognized tribe retains national sovereignty, the tribes also function similarly to states in that they receive assistance from the U.S. federal government in the form of social services, including support for community economic development. Some Native CDFIs are incorporated under tribal law; others are established as separate 501(c)(3) organizations. Therefore, Native CDFIs may have to fulfill the compliance requirements of the state, federal government, and tribe, and those responsibilities may span across multiple agencies. Such responsibilities may include:

- Maintaining a registered agent[1]
- Filing an annual report
- Maintaining charitable solicitation or fundraising registration[2]
- Filing a corporate tax return
- Maintaining state-level tax exemption
- Financial management
- Reporting

Why is an Effective Compliance Program Essential for Small Nonprofits?

Nonprofits are held to a high standard of government regulation and public scrutiny. Organizations with 501(c)(3) designation are exempt from federal corporate taxes and have access to public funding. These benefits are not typically available to for-profit businesses, so laws are in place to

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[1] A registered agent is a responsible third-party in the same state as the business who can receive service of process notices, correspondence from the Secretary of State, and other official government notifications—usually tax forms and notice of lawsuits—on behalf of the corporation or LLC.
[2] If your nonprofit is engaged in fundraising activities, it is likely that it will need to file a registration form with any state where it is soliciting donations. The majority of states require registration in advance of engaging in any fundraising or solicitation activity. This requirement is known as "charitable solicitation registration."

protect the public and ensure nonprofits do not abuse their financial privileges. States and the IRS have ongoing requirements that nonprofits must meet. Nonprofits must file an IRS Form 990 for tax returns each year with the IRS to disclose their financial data for the year.

- **Compliance is part of your organization's duties to its community and stakeholders.** Without a compliance function, you cannot reliably build or maintain trust with others. Trust is fostered through three elements:

    1. Repeated interactions
    2. Honest communication
    3. Following through on commitments

    Organizations cannot ensure that they are meeting element (2) or (3) unless they have adopted rules about proper communications and follow-through. The head of the organization will be more confident that employees are being honest in their interactions if the organization has adopted rules about honesty and trained people about the importance of honesty and candor. Organizational leaders cannot be confident that people are following through on commitments unless there are rules and norms that have been adopted and emphasized throughout the organization.

    For example, when seeking funding from private foundations, it is generally best practice to begin to build relationships with foundation staff before applying for a grant and to cultivate that relationship throughout the award period. Following through on commitments during these repeated interactions will build trust. (i.e. If you have a conversation with the funder and they ask for more information about your organization, be sure you provide the information in a timely manner.) When a problem in your program arises that may impact your ability to meet grant goals or objectives, a relationship built through repeated, positive interaction and honest communications with the funder will lead to a greater likelihood that the funder will work with you to address the issue in a way that benefits all parties.

- **If you have no compliance function, you invite reputational damage.** If you are not trusted in the marketplace, clients are unlikely to work with you, and funders are less likely to fund you. On the other hand, if you are trusted, clients will give you the benefit of the doubt. Without a strong compliance function, however, one misstep could lead to a crisis.

- **Compliance helps define an organization's "why."** We often say WHAT we do and we sometimes say HOW we do it, but we rarely say WHY we do what we do. One crucial aspect of that "why" is the set of values and ethical principles that guide the organization's behavior. A compliance function requires the organization to describe those values and ethics sufficiently so that team members understand them and will refer to them. It requires an organization to train team members on values and ethics, and it requires the organization to hold team members accountable for them. In other words, compliance helps to define the why.

- **Compliance helps define and regulate an organization's "how."** Compliance focuses on what behaviors will and will not be permitted in the execution of the "why." A narrow view of compliance is that it is an exercise in saying no, as those in charge of the rules enforce those rules to prohibit behavior. When compliance is done well, it increases efficiency and effectiveness because employees have been trained to know how to do their jobs and how to reason through ambiguous situations.

- **Compliance can serve as a driver of change and innovation.** Some people view compliance as inherently conservative. They think the purpose of compliance is to rein in conduct. Compliance instead can serve as a powerful tool of long-term change. If every staff member is working from uniform codes of conduct and shared values, the result can be powerful!

- **Compliance enhances consistency.** Without a compliance function, decisions are ad hoc and made in a vacuum. Articulated values, ethics policies, and codes of conduct provide reference points for making decisions a matter of routine.

- **Compliance can reduce unforced errors.** Careless errors are the most common risks to organizational performance. Compliance helps prevent these types of errors, along with misunderstandings and disputes.

Common Concerns for CDFIs

There are areas of compliance that are especially relevant for nonprofits and CDFIs and need to be monitored:

Political Campaign Activity/Donations by Section 501(c)(3) Organizations

Law: Section 501(c)(3) organizations are prohibited from participating, directly or indirectly, in any political campaign on behalf of, or in opposition to, any candidate for elective public office. Section 501(c)(3) organizations may take positions on public policy issues but generally are required to avoid issue advocacy that constitutes political campaign intervention.

> **Suggestion:** Consider adopting a policy to safeguard against violations, such as prohibiting employees from posting statements supporting or opposing candidates on the organization's website, blogs, and Facebook, Twitter, and other social media accounts and prohibiting them from using their work email accounts to do so. It is helpful to remind employees of the policy during election season.

Suggestion: If the organization's leaders speak publicly or publish in their personal capacity, consider requiring that they expressly state that their comments are personal and do not represent the views of the organization.

Failing to Comply with Charitable Solicitation Registration Requirements

Law: Approximately 40 of the 50 states require registration prior to soliciting charitable contributions or grants in their state. The rules vary from state to state, can be nuanced, and are sometimes unclear in the context of fundraising on social media. Even after the initial registration, many states require filing an annual renewal report and paying an annual fee. Penalties can be imposed for noncompliance, including monetary penalties (which are often imposed for late filings) and barring fundraising in their state.

Suggestion: Review and assess the applicable requirements in the states in which your organization solicits grants or contributions.

Suggestion: Evaluate your organization's process for adding donors to its mailing lists after they make an initial contribution, and institute a procedure for ensuring registration in advance of soliciting.

Failing to Properly Address Conflicts of Interest among Directors or Officers

Law: Many state nonprofit corporate laws impose specific rules with respect to transactions involving a conflict of interest, and directors and officers have fiduciary duties under state law to act in the best interest of the nonprofit corporation, rather than for private gain. Some states, like New York, require certain nonprofit organizations to adopt a conflict of interest policy that meets basic requirements.

Certain related party transactions are required to be disclosed on the organization's annual IRS Form 990 return, and Form 990 also requires disclosure of whether the organization's board has adopted and implemented a conflict of interest policy. An organization's IRS Form 990 is widely available online to the public, donors, and the press.

Suggestion: The organization's board should adopt an appropriate conflict of interest policy if it has not done so. Directors and officers should be required to complete and annually submit a conflict disclosure form and to report potential conflicts that arise during the year.

Failing to Adhere to the Organization's Bylaws

Law: An organization's bylaws set forth the operating rules for the organization's governance, such as for the election and removal of directors and officers and determining the number of board members. The bylaws should also reflect state law requirements regarding governance.

Organizations need to follow the bylaws to ensure compliance with applicable law and for the election of directors and officers and other corporate actions to be legally valid and recognized.

Issue: Some nonprofit organizations, particularly smaller organizations, tend to either not strictly follow their bylaws or modify their bylaws in ways that are not consistent with applicable law (such as to permit those not on the board to serve on a board committee). However, the language included in bylaws is often critical because it is drafted to have a precise legal meaning designed to comply with applicable law and to be commonly understood by attorneys.

Taking action (e.g., approving an agreement or transaction) without strictly following the organization's bylaws, board resolutions, and customary corporate formalities, such as not having a quorum at a board meeting or not giving required notice to board members, can make the action susceptible to being challenged and cause significant difficulties for the organization.

> **Suggestion:** The organization's bylaws should be reviewed periodically by the board or a board committee and should be amended as needed to reflect changes to the organization and to applicable law over time.
>
> **Suggestion:** When amending your organization's bylaws, applicable state or tribal laws should be reviewed for any requirements or restrictions.

While a 501(c)(3) nonprofit receives key financial benefits, the penalties for failing to meet government requirements can be very serious. The IRS can revoke a nonprofit's tax exemption and impose fines that can accrue daily. A state can administratively dissolve a nonprofit corporation and levy steep financial penalties. State and federal requirements notwithstanding, an organization can lose out on a grant or large donation as a result of not keeping itself in good standing. A proactive approach to compliance helps ensure sustained success, and the cost is small in comparison to the much larger costs of citations and penalties.

Nonprofits need to keep adequate and complete records. This practice is critical when board members or donors request information, when applying for funding, or in the event of an audit. Thorough records are necessary for submitting applications and filing for renewal with various government agencies.

Compliance lays a strong foundation for your nonprofit's success, letting you make plans and fulfill them with confidence. It builds trust with potential donors and safeguards your reputation. Most importantly, it gives you peace of mind so you can focus on maximizing your impact by creating sustainable small businesses, enhancing financial capability, and supporting first-time homeowners.

Additional Resources

- "The Complete Nonprofit Compliance Checklist From an Expert" at https://www.wildapricot.com/blogs/newsblog/2017/09/28/complete-nonprofit-compliance-checklist
- Chart that summarizes audit requirements for charitable solicitation registration and renewal. https://www.cogencyglobal.com/audit-requirements-for-state-charitable-solicitation-registrations-and-renewals
- "Using The Whole Whale: A Crash Course In Fundraising Compliance," Ron Barrett, COGENCY GLOBAL INC. https://www.cogencyglobal.com/blog/using-the-whole-whale-crash-course-in-fundraising-compliance
- Internal Revenue Service (IRS). *Compliance Guide for 501(c)(3). Public Charities.* https://www.irs.gov/pub/irs-pdf/p4221pc.pdf

Module 2 Wrap Up and Reflection

Think about the common issues we've discussed. Are any of them weak points for your Native CDFI? How could you plan to address them?

Module 3 – Developing a Culture of Compliance in your CDFI

As a mission-driven organization, we are all committed to doing good. A culture of compliance enforces a commitment to do good **in the right way.**

A CULTURE OF COMPLIANCE IS…

(write words that you associate with a culture of compliance below)

A Culture of Compliance Starts at the Top

In its Evaluation of Corporate Compliance Programs[3], the Department of Justice (DOJ) affirms the importance of leadership's influence and input on ethical behavior. When investigating corporate misconduct, DOJ includes the following factors to be taken into consideration:

- **Conduct at the Top** – How have senior leaders, through their words and actions, encouraged or discouraged compliance, including the type of misconduct involved in the investigation? What concrete actions have they taken to demonstrate leadership in the company's compliance and remediation efforts? How have they modelled proper behavior to subordinates? Have managers tolerated greater compliance risks in pursuit of new business or greater revenues? Have managers encouraged employees to act unethically to achieve a business objective, or impeded compliance personnel from effectively implementing their duties?

[3] Harbor Compliance, Evaluation of Corporate Compliance Programs, https://www.harborcompliance.com/information/charitable-registration?utm_source=councilofnonprofits.org&utm_medium=referral

- **Shared Commitment** – What actions have senior leaders and middle-management stakeholders (e.g., business and operational managers, finance, procurement, legal, human resources) taken to demonstrate their commitment to compliance or compliance personnel, including their remediation efforts? Have they persisted in that commitment in the face of competing interests or business objectives?

- **Oversight** – What compliance expertise has been available on the board of directors? Have the board of directors and/or external auditors held executive or private sessions with the compliance and control functions? What types of information have the board of directors and senior management examined in their exercise of oversight in the area in which the misconduct occurred?

Leaders Model Compliance and Prioritize It

Modelling and prioritizing compliance are especially important—and challenging—in small, understaffed, and overworked nonprofits.

Prioritizing compliance encompasses:

1. **Establishing and adopting written policies, procedures, and standards of conduct.** Having clear written policies and procedures in place that describe compliance expectations fosters uniformity within your company.

   Good examples of the following policies are included in **Appendix A**.

   - **Code of Conduct or Code of Ethics** - A written set of principles to guide a nonprofit organization's decision-making and activities, as well as the behavior of its employees, volunteers, and board members.

     Spark Compliance Consulting[4] identifies the following five best practices for a code of conduct:

     - "Tailored to your company; conforms to the organization's brand and references and meshes with your mission and vision
     - Online and easy to find (i.e. accessible to your staff and stakeholders)
     - Not in legalese; needs to be accessible and not intimidating
     - Visually appealing
     - Provides clear guidance; makes clear what is expected of employees in general and also gives them resources should they need more guidance."

[4] Spark Compliance Consulting, Five Best Practices for Every Code of Conduct, http://www.sparkcompliance.com/blog/2019/2/19/five-best-practices-for-every-code-of-conduct

- **Whistleblower Policy -** This policy encourages staff and volunteers to come forward with credible information on illegal practices or violations of adopted policies of the organization, specifies that the organization will protect the individual from retaliation, and identifies those staff or board members or outside parties to whom such information can be reported. The IRS Form 990 asks whether your organization has a whistleblower policy.

  Considering our small communities, consider designating an independent lawyer or accountant an employee or other stakeholder could contact and with whom they would be confident that they would remain anonymous. The independent entity would then interface directly with the Board of Directors on behalf of the whistleblower throughout any investigation.

- **Conflict of Interest Policy -** A policy on conflicts of interest should:
  - (a) require those with a conflict (or who think they may have a conflict) to disclose the conflict/potential conflict;
  - (b) prohibit interested board members from voting on any matter in which there is a conflict; and
  - (c) determine how the board will manage the conflict.

  At minimum, the policy should address the following questions that are asked on the IRS Form 990:

  - *Did the organization have a written conflict of interest policy?*
  - *Were officers, directors, trustees, and key employees required to disclose annually interests that could give rise to conflicts?*
  - *Did the organization regularly and consistently monitor and enforce compliance with the policy? If "Yes," describe in Schedule O how this was done.*

  In small organizations, employees should be directed to disclose potential conflicts of interest to the Executive Director and board members, and the Executive Director would disclose potential conflicts directly to the Board. The action taken in response is dependent on the nature of the conflict.

CDFI Implementation Tip

Consider developing specific Conflict of Interest policies as it relates to lending. For example, are staff or board members or their family members eligible to receive loans? If so, what guidelines are in place to ensure no one with a conflict is involved in making or servicing that loan? Are these policies clearly communicated to all stakeholders?

- **Confidentiality Policy -** As CDFIs/lenders, we obtain and store a lot of Personally Identifiable Information (PII), private financial information, and perhaps even Payment Card Industry (PCI) information (e.g., ACH information for loan payments, etc.). If this information is not safeguarded, it could be disastrous to our clients, many of whom are already in financially risky positions. This policy needs to start with well-designed, safe systems and clearly outline how personal information is handled and safeguarded.

- **Document Retention Policy -** The Sarbanes-Oxley Act (SOX) is directed at improving corporate transparency and accountability. For nonprofits, key among the SOX provisions are document retention practices. Per the IRS, a document retention and destruction policy identifies the record retention responsibilities of staff, volunteers, board members, and outsiders for maintaining and documenting the storage and destruction of the organization's documents and records. Unfortunately, neither SOX nor the IRS yet provides explicit document retention schedules.

  You can find recommendations from the Charities Review Council on the length of time that you should retain different types of records included as **Appendix B**.

  Keep in mind that different funders or stakeholders might have different requirements. The retention policy should be updated when your contractual requirements change.

- **Executive Compensation Policy.** Per the IRS[5], there are three main principles that should be followed when drafting an executive compensation policy that is designed to ensure that executive compensation is identifying compensation that is "reasonable and not excessive."

  - The compensation arrangement must be approved in advance by an authorized body of the applicable tax-exempt organization, which is composed of individuals who do not have a conflict of interest concerning the transaction.
  - Prior to making its determination, the authorized body obtained and relied upon appropriate data as to comparability.
  - The authorized body adequately and timely documented the basis for its determination concurrently with making that determination.

  If you draft a policy following these standards, you can answer the following IRS Form 990 question in the affirmative: *Did the process for determining compensation of the following persons include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision?*

[5] IRS, Rebuttable Presumption - Intermediate Sanctions
https://www.irs.gov/charities-non-profits/charitable-organizations/rebuttable-presumption-intermediate-sanctions

How many of these five essential policies does your organization already have?

2. **Committing a budget for compliance.** Someone once said, “Don’t tell me where your priorities are. Show me where you spend your money and I’ll tell you what they are.” Another equally as eloquent quote is, “Put your money where your mouth is!”
    - **Staff time** – Planning for, implementing, and maintaining a well-run compliance program takes time, and your team does not work for free. While you probably aren’t going to hire a full-time compliance officer, you also cannot add new responsibilities to your already overworked staff. However you decide to divide up compliance responsibilities, time is money. We’ll talk more about this challenge in Module 4.
    - **Tools** – Good compliance is built on systems, processes, tracking, and accountability. There are tools that can make these efforts easier and more effective. They are covered more fully in Modules 4 and 10.
    - **Training** – New systems, processes, and expectations don’t get passed down by osmosis. You need to invest in training to ensure your organization and staff have the skills and mindsets to succeed. Refer to Module 5 for details about compliance training.

3. **Transparent and open communication**. Integrating your code of conduct, policies, and expectations on compliance will not happen on its own. It isn’t enough to have your staff sign the policies when they are hired and never talk about it again. The following are ways to keep compliance in the forefront:

    - Provide periodic training on old and new compliance concerns.
    - Integrate compliance expectations into job descriptions.
    - Post policies in prominent places. (Some funders even require this.)
    - Publicly point out and reward good conduct.
    - When mistakes are made, acknowledge the issue with honesty and transparency as you work to correct it.

4. **Assigning accountabilities.** Determine who will develop and adopt compliance policies and processes; who will be responsible for identifying who will oversee, monitor, and enforce the compliance program; who staff or clients should go to with questions and concerns; and who will be responsible for doing the compliance-related tasks.

- **Board of Directors / Executive Director** – Develops and adopts compliance policies and processes and provides high-level oversight (may be delegated to Executive Committee or Audit Committee)
- **Staff Compliance Officer** – Monitors and enforces the compliance program and acts as the person stakeholders should address with questions and concerns. In small organizations, this may be the responsibility of the Assistant Director or Director of Administration & Finance.
- **Director/Manager-Level Staff** – Has responsibility for completing the compliance-related tasks (i.e. annual filings, program reports, etc.)

5. **Consequences for noncompliance.** Develop a plan to enforce standards of conduct in a timely manner, outlining appropriate and consistent disciplinary measures for employees who fail to comply with program requirements.

Remember it is always important to modify and adapt any sample policies to fit the specific needs and culture of your organization, but these sample templates can act as a reference when creating new policies or updating your existing policies.

Additional Resources

- Forbes.com, Creating A Culture Of Compliance: Why All Successful Businesses Must Do This And Where To Begin, https://www.forbes.com/sites/forbestechcouncil/2018/09/17/creating-a-culture-of-compliance-why-all-successful-businesses-must-do-this-and-where-to-begin/#282291ce5050
- National Council of Nonprofits, Principles and Practices – Where can you find "best practices" for nonprofits?, https://www.councilofnonprofits.org/tools-resources/principles-and-practices-where-can-you-find-best-practices-nonprofits
- National Council of Nonprofits, Whistleblower Protections for Nonprofits, https://www.councilofnonprofits.org/tools-resources/whistleblower-protections-nonprofits
- U.S. Department of Labor, Occupational Safety and Health Administration, The Whistleblower Protection Program, Whistleblowers.gov
- Blueavocado.org, Nonprofit Conflict of Interest: A 3-Dimensional View, https://blueavocado.org/leadership-and-management/nonprofit-conflict-of-interest-a-3-dimensional-view/?gclid=EAIaIQobChMIprHj7eSq5QIVI4VaBR1flA4rEAAYASAAEgIlYvD_BwE
- National Council of Nonprofits, Conflict of Interest, https://www.councilofnonprofits.org/tools-resources/conflicts-of-interest
- National Council of Nonprofits, Document Retention Policies for Nonprofits, https://www.councilofnonprofits.org/tools-resources/document-retention-policies-nonprofits

Module 3 Wrap Up and Reflection

Do you feel like your Native CDFI has a culture of compliance? Why or why not? What are three things that you could do to make your culture of compliance stronger?

Module 4 – Developing a Compliance Program

Now that you have made the decision to prioritize compliance in your organization and have a code of conduct and essential policies, a budget, and accountable parties, it is time to do the hard work of launching a compliance program.

Launching such a program takes time, effort, and elbow grease. You'll need to look realistically at your internal and staff capacity and ask questions such as: What time is your board willing to dedicate to this? Does your designated compliance officer have the bandwidth to dedicate to this endeavor?

Based on this assessment, your organization may want to consider hiring a consultant to lead this process. If you decide to tackle it internally, you need to define a timeline for implementation that takes staff workload into account.

Step 1: Research and Document Your Compliance Requirements

You need to consider numerous requirements related to legal filing and recordkeeping.
Federal Filing Requirements (Annual)

- IRS Form 990
- sam.gov (annual renewal to maintain your grants.gov account and the ability to apply for federal grants)
- Submission of A-133/Single Audit to the Federal Audit Clearinghouse[6] (if you are federally funded and required to complete a Single Audit)

Annual/Periodic State or Tribal Filing Requirements[7] (varies by state or tribe)

- Secretary of State - periodic confirmation that your organization is still in existence
- State tax filing requirements
- Annual registration with the organization that oversees charitable solicitations
    - Charity Officials by State[8]
    - More on charitable solicitation compliance:
        - Charitable Solicitation Registration
        - Fundraising Compliance Guide[9]

[6] Federal Audit Clearinghouse, https://harvester.census.gov/facweb/
[7] National Council of Nonprofits, State Filing Requirements for Nonprofits, https://www.councilofnonprofits.org/tools-resources/state-filing-requirements-nonprofits
[8] National Association of State Charity Officials, State Government, http://www.nasconet.org/resources/state-government/
[9] Harbor Compliance, Fundraising Compliance Guide, https://www.harborcompliance.com/information/charitable-registration?utm_source=councilofnonprofits.org&utm_medium=referral

While tribal compliance varies by tribal nation, if your Native CDFI is incorporated under your tribe, the annual compliance requirements can look very similar to state requirements. If you chose to incorporate under the state, most tribes require to provide an annual report and communicate any changes to registered agent. While some tribes have easy to-use on-line systems for managing this, in many cases, this filing will be done via email or in-person with tribal government staff.

Additionally, if you chose to incorporate under the state, some Nations—like the Navajo Nation—would require you to file as a "foreign corporation" and provide a certificate of good standing from the state. It is important to check with your tribal nation about their specific registration requirements regardless of where your CDFI choses to incorporate.

Activity: All Group Discussion - Tribal Incorporation and Compliance

Raise your hand if your Native CDFI is tribally incorporated.

Questions for Discussion:

- What tribal department or entity governs your tribe's charity activities?
- What filing or reporting requirements do you have?

NOTES:

Financial and Legal Requirements - Once your organization is incorporated and receives nonprofit status from the IRS, meeting annual filing requirements often covers financial and legal compliance. If a situation arises in which an organization has changes, nonprofits should consult with a CPA and lawyer who are familiar with nonprofit compliance. For example, if you launch a social enterprise or purchase a building that generates rental income from outside tenants, you need to consider how the profit from that income needs to be treated for tax purposes.

Reporting and other Contractual Requirements - In addition to staying legally organized and compliant with charitable statutes and your IRS nonprofit status, individual funders have unique contractual requirements, including, but not limited to, periodic reporting. We'll talk more about this in Grants Management - Module 11.

CDFI Implementation Tip

Remember to add organization loan payments and maturity dates to your list of contractual requirements. This is critical, as loans may have long, multi-year terms. re staff needs to know which loans are coming due.

Recordkeeping Requirements – Once you have a records retention policy, you need to routinely check that your records are organized, accessible, and backed up.

Step 2: Assign Accountability and Create, Empower, and Support Oversight

As discussed in Module 3, there are three levels of accountability when it comes to compliance.

1. **Board of Directors/Executive Staff** - Develops and adopts compliance policies and processes and provides high-level oversight (may be delegated to Executive Committee, Governance Committee, or Audit Committee)
2. **Staff Compliance Officer** - Develops, implements, and monitors the compliance program and acts as the person stakeholders should address with questions and concerns
3. **Director/Manager-Level Staff** - Has responsibility for completing the compliance-related tasks (i.e., annual filings, program reports, etc.)

It is critical that there is a staff member or members who have responsibility for compliance. In order for this to be prioritized, compliance responsibilities should be codified in job descriptions, assigned a full time equivalent (FTE) value, and become part of the annual or biannual review. Remember, this role cuts across all programs. The amount of time dedicated to compliance is dependent on the size and complexity of the organization. For very small organizations, consider budgeting .1 to .15 FTE to compliance functions.

In very small organizations, it may be challenging to implement multiple levels of accountability as the Executive Director is likely also acting as a program director or manager AND providing direct services. The main thing to remember is that the compliance officer should be separate from the person who is responsible for completing the compliance-related tasks.

What are the six main functions of a compliance officer?

1. Developing, implementing, and managing an organization's compliance program
2. Coordinating and scheduling required compliance training for employees
3. Developing company compliance communications
4. Creating and coordinating proper reporting channels for compliance issues
5. Coordinating with funders and other compliance-focused stakeholders
6. Planning, implementing, and overseeing risk-related programs

In very small organizations, these functions may be split up among multiple staff members. For example, an administrative-focused staff member may own the first four functions, while it may make more sense for the Executive Director or Controller to have responsibility for the last two functions listed above.

Once the compliance responsibilities are codified, assign the requirements identified in Step 1 to individual positions within the organization to ensure that there is no ambiguity about who is responsible for completing each task. Ideally, these should also be codified in job descriptions.

Step 3: Identify and Implement the Tools and Systems Needed to Support Compliance

At minimum, this endeavor would include the following:

- **Paper filing system** that is organized and maintained
- **Shared drive** that is organized, access controlled, and either cloud-based or backed up regularly
- **Shared calendar** populated with filing and reporting requirements, with each requirement shared with accountable staff; reminders can be set at defined intervals to ensure plenty of time to complete the task
- Access-controlled **password manager** system for online accounts to ensure continuity of access to critical systems

The hardest part of Step 3 is designing each system in a thoughtful way. For example, what digital file structure will ensure that documents are organized and easy-to-find? How is access granted and controlled to ensure that sensitive documents or passwords are only accessible to people who need them?

Note: Microsoft OneDrive and Google Drive both support these features. There is no need to purchase expensive or hard-to-use tools.

Step 4: Provide Staff Training and Education

Based on the level of readiness of your organization and staff, the designated Compliance Officer should identify needs and design appropriate training. This should start with the code of conduct if it is new, but don't forget the practical training as well (i.e., How do I use this tool or complete this filing?) We'll cover this further in **Staying Above Board: Compliance Training - Module 5**.

Step 5: Set up a System to Monitor and Report on Compliance

This step can be as simple as turning the list of documented compliance requirements from Step 1 into a checklist or dashboard and updating it on a monthly basis.

Remember to report out to your board!

Additional Resources

- National Council of Nonprofits, Federal Filing Requirements for Nonprofits https://www.councilofnonprofits.org/tools-resources/federal-filing-requirements-nonprofits
- Robert Half, Compliance Officers: What They Do and Why They're in Demand, https://www.roberthalf.com/blog/salaries-and-skills/compliance-officers-what-they-do-and-why-theyre-in-demand

Module 4 Wrap Up and Reflection

What are three things that you can do when you get back to work to develop your Native CDFI's compliance program? What resources will you need? Who can help you?

Module 5 – Staying Above Board: Compliance Training

The Definition, Goals, and Purpose of Compliance Training

Organizational and regulatory compliance may not be 'top of mind' when we think about building organizational capacity and sustainability, but your Native CDFI cannot run without some level of compliance. An organization that engages in compliance training typically hopes to accomplish several goals:

- Avoiding and detecting violations by employees that could lead to legal liability for the organization
- Creating a more hospitable and respectful workplace
- Laying the groundwork for a partial or complete defense in the event that employee wrongdoing occurs despite the organization's training efforts
- Adding business value and a competitive advantage
- Making itself more attractive to potential funders

As discussed in Module 2, *corporate compliance* enables your CDFI to operate safely and efficiently, and *regulatory compliance* ensures that your workplace follows laws and regulations, which collectively work together to make a CDFI attractive to outside funders and investors as well as to clients and other stakeholders. Whether a start-up or mature organization, in order to improve compliance, your organization must offer compliance training to help employees understand rules and regulations.

What percent of your staff training budget is devoted to compliance training?

By conducting effective compliance training, employees get familiar with the operating procedures and philosophies of the organization. They learn about the ethical and legal issues that are required and go along with their job requirements. Good compliance training helps employees flourish. They know their responsibilities and boundaries and can work productively with less supervision.

However, with all the different aspects of operations and training, it's easy for organizations to overlook or rush through compliance training. In Brandon Hall Group's 2017 Training Benchmarking Study, respondents indicated that, on average, compliance training accounts for 11 percent of the Learning and Development (L&D) budget. The study also found that only about one-third of organizations consider their compliance training efforts to be effective. For a majority of organizations, there is a significant gap in how well they deliver compliance training compared to other types of learning.

The leadership of small CDFIs face challenges to build the capacity of their organizations, including providing effective training in compliance. The failure to institute compliance training could result in anything from a disciplinary letter to closing down the organization. Effective ethics and compliance trainings are more than just formalities when onboarding new staff. Considering limited resources, one option could be to incorporate short trainings or 'briefings' on a specific compliance policy into each weekly staff meeting.

Topics to Cover in Compliance Training

Compliance training is different than general training covering job functions and operations such as client intake, loan underwriting, or filing reports. Instead, it covers a broad range of topics and rules. In general, all compliance training will cover two categories:

1. Broad business and employment laws, industry-specific regulations, and the principles and policies of the organization itself.
2. Discussions of legal and ethical issues as well as company values and operating philosophies.

Topics organizations may cover in compliance training include the following:

- Federal, state, and tribal laws
- Company SOPs and policies
- Code of conduct
- Data privacy and security
- Fraud detection and prevention (anti-money laundering, anti-bribery, etc.)
- Business ethics (gift policy, conflicts of interest)
- Discrimination
- Sexual harassment
- OSHA regulations and workplace safety
- Risk management
- Workplace substance abuse
- Workplace violence
- Diversity and inclusiveness in the workplace
- Customer service standards
- Reporting violations

Fund Development and Compliance: A Team Approach

A great deal of time and energy is devoted toward fundraising and contract compliance. Nonprofits are often reliant upon government and/or grant funds, which are usually inadequate for the total program expense and often come with compliance requirements. How do you get folks to step up to play their appropriate roles in development and compliance, whether direct or indirect? How do you help them to see fundraising as a noble pursuit and compliance as the 'guardian' of those funds?

The first step is by helping all staff and volunteers of your organization recognize they have a vested interest not only in fund development, but in the compliance requirements that help ensure that funding will continue. Begin by assuring everyone is well-informed of development's impact and how effective grant reporting will enable the organization to operate.

- What programs does it make possible?
- What are the implications of not meeting program reporting requirements?
- What would change were philanthropy to dry up?

In terms of government reporting and compliance, bring all staff together to discuss the following questions:

- Can we address the reporting requirements?
- Do we understand the statutory and/or regulatory rules that govern the grant award for which we have been funded?
- When and how should we review the grant award requirements and track progress in meeting milestones established in our award agreement?
- Who are the designated personnel within our organization to manage grants in the post-award phase?
- What is our process to regularly collaborate with grantors to ensure open communication, and address issues as they arise?

Having this discussion on a quarterly basis will reinforce the message that achieving the mission is directly tied to instituting and implementing strong grant reporting requirements.

Activity: All Group Discussion

Questions for Discussion:

- Do any of these compliance topic areas relate differently to Native CDFIs?
- For example, what might a training on ‘risk management’ include?

NOTES:

Benefits of Compliance Training

It's not enough to simply provide employees with a list of the rules they need to follow. Compliance needs to be built into the corporate culture. Workplace compliance training helps make this happen. Usually, employees don't break the law intentionally. Many lapses in compliance occur because the employee doesn't know about a rule or doesn't understand how it applies to their work. Done right, it's an opportunity to lay the groundwork for a healthy workplace culture, discuss issues, and proactively address potential violations before they arise.

All of this helps your Native CDFI as a whole stay in compliance by making sure everyone takes responsibility for compliance. When everyone understands the expectations and standards, the organization can operate at an optimal level. If a compliance issue does arise, training records demonstrate that the organization trained employees about regulations and took steps to maintain compliance. This can help decrease the organization's liability.

How to Create an Effective Compliance Training Program

Studies indicate that most employees think they already know the content of compliance training, so they don't really need to pay attention. That's understandable, as the 'training' may just be a rundown of rules and regulations without really engaging them. This scenario creates the potential for significant risk exposure. Effective compliance training instills in employees the importance of compliance and shows them how compliance issues apply to them. Here are a few ideas for creating an effective compliance training program:

Make it Personal

Much of compliance training is preventative, and some topics may seem simply theoretical to employees. So, it's important for compliance training to use real-world scenarios and examples. A best practice is to tie the training to the actual issues the company faces and speak to the "why" behind compliance.

A good way to do this is to personalize training content to fit your CDFI's needs. Many organizations make their own short (and funny) videos to emphasize to their employees why the issues matter for your organization.

Make it Interesting

Training by PowerPoint alone is often not very engaging. But what if you told a story? Throw in some jokes? Add some visual aids? All of these elements help employees engage with the content and understand how it applies to them.

Visuals and Quotes

Jokes: The Classic Light Bulb Gag

"How many compliance officers does it take to change a light bulb?" Three. One to change it, one to check it, and one to check it again and file a report."

Make it Understandable

In order to follow the rules, employees need to be able to understand them.

- Make sure your compliance training content is easy to comprehend. Take out the jargon and technical data that employees may not understand.
- Try to accommodate different learning styles to make sure employees can easily digest the information. This may mean using a variety of written content, audio and video content, and other visuals.

Make it Ongoing

Compliance training shouldn't be a one-time thing. Laws and regulations change, and employees need to be aware of those changes. Even when regulations don't change, employees need to be reminded of policies, procedures, and best practices. There is no reasonable expectation of retention if an employee only hears about compliance issues when they are first hired. Regular training and follow-through will help your employees remain aware of compliance issues.

In closing, when designing your compliance training program, make sure to create personalized, interesting training content, make training accessible, and offer regular compliance training.

Activity: Small Group Discussion

Questions for Discussion:

- How frequently does your Native CDFI conduct training in compliance?
- What specific topics can you recall being addressed?
- Does the training cover both legal and regulatory compliance issues?
- Do you have a handbook that covers all compliance policies? Is it available on your server?
- Has there been a time when a clear violation of corporate compliance occurred, but there was no policy to address it?
- Are there opportunities for staff to give feedback on compliance issues?

NOTES:

Additional Resources

- 5 Training Examples to Inspire Your Next Compliance Course. https://community.articulate.com/articles/5-training-examples-to-inspire-your-next-compliance-course
- Definitive Guide to Ethics & Compliance Training. https://www.navexglobal.com/en-us/resources/definitive-guides/definitive-guide-ethics-compliance-training?RCAssetNumber=1887
- Developing a compliance awareness training program. https://searchsecurity.techtarget.com/tip/Developing-a-compliance-awareness-training-program

Module 5 Wrap Up and Reflection

Does your Native CDFI do compliance training? Do you feel that it's effective? If yes, what makes it effective? If no, how could it be improved?

Activity: Small Group / All Group Activity

Let's sort ourselves into industry-specific CDFIs, such as microenterprise, small business, affordable housing, etc. (5 minutes)

Have a brief discussion about how compliance for your borrower might look different than compliance for your organization. Do they face different regulations? Challenges? etc. (10 minutes)

Based on your understanding of compliance and of your borrowers, develop an outline of a compliance-focused course that you could offer to your borrowers.

Share a summary of your group's discussion with the larger group.

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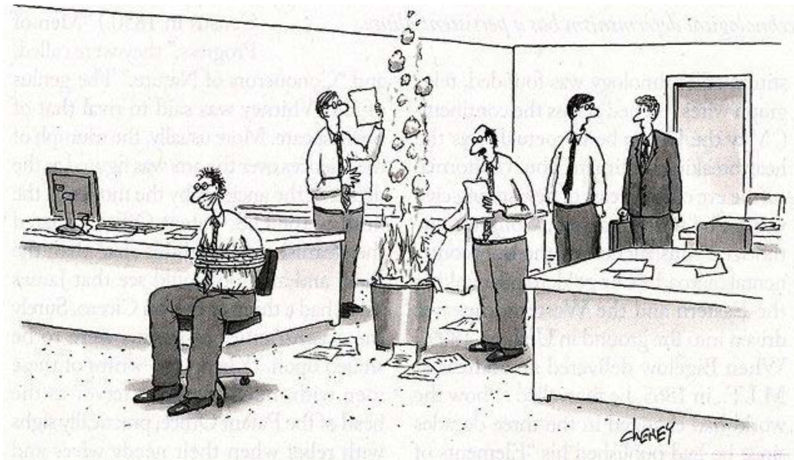
Module 6 – Developing Internal Controls for Native CDFIs



"First rule—what happens in accounting stays in accounting."

All CDFIs have financial management practices in place, often referred to as "internal controls." Internal controls are the policies and procedures that protect the assets of an organization, create reliable financial reporting, promote compliance with laws and regulations, and facilitate effective and efficient operations. They relate to accounting, reporting, and to the organization's communication processes.

Regardless of size, all nonprofit organizations should establish policies and procedures to assure that 1) boards and officers understand their fiduciary responsibilities, 2) assets are managed properly, and 3) the charitable purposes of the organization are carried out. Failure to meet these three obligations is a breach of fiduciary duty, and it can result in financial and other liability for the board of directors and officers.

Activity: All Group Discussion

Instructions: Before we get into the specifics of internal controls, let's discuss the following questions:

- What comes to mind when we hear the term 'internal controls'?
- Can you identify some examples of financial management practices?
- Does your position involve utilizing financial management practices?
- How are these practices communicated to staff?

NOTES:

Definition of Internal Controls

"Internal controls" are financial management practices that are systematically used to prevent misuse and misappropriation of assets, such as theft or embezzlement. Internal controls are generally described in written policies that specify the procedures that the nonprofit will follow, as well as who is responsible. The three primary areas of the organization that internal controls influence are: (1) Operations; (2) Reporting; and (3) Compliance.

The goal of internal controls is to create business practices that serve as "checks and balances" on staff (and sometimes board members) and/or outside vendors, in order to reduce the risk of misappropriation of funds/assets.

- **Example of a basic internal control:** A policy that requires two signatures on a check is a basic internal control. This business practice is designed to prevent one person from having sole authority for writing checks on the CDFI's behalf.

- **Example of an internal control that every nonprofit can put into practice:** A policy to lock the office door when no one is monitoring the entrance. This policy is designed to minimize the risk of theft of computers that can happen in broad daylight and with very little time needed to unplug, pick up, and carry valuable assets.

More examples of internal control policies:

- A policy requiring that employees only be reimbursed for expenses that are approved in advance, in writing.
- A "segregation of duties" policy requiring that the person who logs in checks received in the mail is not the same person who is responsible for depositing checks. Similarly, the same person should not both prepare the payroll and also distribute or have custody of the payroll checks.
- A periodic review by an objective person of the list of all vendors receiving fees/checks from the nonprofit (because a common scheme involves creating a fictitious vendor). In a small CDFI, this function could be the responsibility of a member of the Board Finance Committee.
- A policy to conduct a background check of employees who handle money, both prior to hire and periodically throughout employment.

Principles of Effective Internal Controls

There are several principles that guide the development of an organization's internal controls.

- Internal controls benefit rather than restrict management.
- Internal controls make sense within each organization's unique operating environment.
- Internal controls are not stand-alone practices. They are woven into day-to-day responsibilities of managers.
- Internal structures and controls are cost effective.

Properly designed and implemented, internal controls provide reasonable assurance that management meets its objectives and fulfills its responsibilities. For example:

- Programs and functions achieve their intended results (effective).
- Resource use is consistent with the agency mission (efficient).
- Laws and regulations are followed (compliance).
- Accurate and timely information is prepared (reliable reporting).

Internal Controls Build Trust

Lucy M. Morgan, in *How to Build Trust with Strong Internal Controls,* believes that the most important role of internal controls in nonprofits is not compliance; *it's trust-building.* "When bad things happen at good organizations, the trust of your donors and the people you serve is broken!" she writes. Here is an example where trust was broken by weak internal controls.

Mission to Support Disadvantaged Youth: In 2013, CBS News reported that the U.S. Justice Department froze federal grant funding to a nonprofit after an audit revealed that the nonprofit could not account for nearly $20 million dollars of federal funds that were drawn by the organization for mentoring youth. Three years of turmoil followed at this widely well-regarded organization, including replacement of the management team and moving the national headquarters, not once, but twice. Three years later, the nonprofit reached a $1.6 million settlement with the Department of Justice and agreed to institute a strict compliance program.

Activity: Small Group Discussion

Besides the things listed below, what else might destroy trust in a Native CDFI?

- Wasteful spending
- Fraud or embezzlement of funds
- “Cooking the books” or creating misleading financial reports
- Ignoring policies or not having clear procedures
- Disregarding regulations
- Breaking the law

NOTES:

Categories of Internal Controls

In practice, there are three categories of internal controls:

- **Entity-level Controls**: Examples of entity-level controls include the enforcement of ethical standards, hiring of competent financial staff, and the appropriate assignment of authority and responsibilities.
- **Information Technology Controls:** These are safeguards that protect the accounting systems from unauthorized access or data manipulation. Examples of information technology controls include password protection and automated data entry accuracy checks.
- **Transaction Controls:** Transaction controls generally address three key areas: the cash disbursement cycle, the cash receipt cycle, and month-end closing and financial reporting.

Example: Month End Closing and Financial Reporting

In the area of *transaction controls*, let's review the best practices in month end closing and financial reporting.

- **Review Monthly Statements Outside of Accounting Department:** The review of monthly bank reconciliations and statements should be performed by someone outside of the bookkeeper/accountant position or outside of accounting (for an organization that only has one employee in the accounting department). Possible reviewers might include the executive director or a member of the finance committee.

- **Create a Month-End Close Checklist:** Create a month-end close checklist that lists all month-end controls such as account reconciliations, financial statement preparation, review of manual journal entries, the check register, and payroll reports. The list should contain two columns for preparer and reviewer sign off. Each task would be initialed and dated by the reviewer and preparer. This review process can be performed by another person in accounting, the Executive Director, or a member of the finance committee.

- **Review Monthly Financial Sheets with Statements:** Review monthly financial reports, including the balance sheet and budget, with actual statements of activities by the Executive Director and the finance committee. Additional review can be performed by department budget managers who are responsible for approving expenses.

Most Native CDFIs know that proper internal controls are essential to protect their organizations against fraud, embezzlement, and inaccurate financial reporting. The difficulty with implementing a plan to safeguard an organization often lies with limitations on budget and staff to properly set effective financial controls and separation of duties. So where do you start? No matter the organization's size, the top priority of any nonprofit should be to put in place basic financial controls.

Each organization will need to strike the right balance for what works operationally without getting bogged down with too many unnecessary internal controls or unnecessary costs in doing so. In the next module, we will review how to implement basic internal controls to protect your CDFI's reputation and meet your fiduciary responsibility to funders, donors, and the general public.

Additional Resources

- AICPA Internal Control Toolkit. https://www.aicpa.org/eaq/internal-control-resources.html
- Rhode Island Office of Internal Audit. Internal Control Guide & Resources. http://www.omb.ri.gov/documents/control-guide/InternalControlGuide-Section3HowtoAnalyzeControlEnvironment.pdf
- National Council on NonProfits. "We're a small nonprofit. What internal controls do we need to have in place?" https://www.councilofnonprofits.org/thought-leadership/we%E2%80%99re-small-nonprofit-what-internal-controls-do-we-need-have-place
- New York State Attorney General. "Internal Controls and Financial Accountability for Not-for-Profit Boards." http://www.nyc.gov/html/nonprofit/downloads/pdf/Internal%20Controls%20and%20Financial%20Accountability%20for%20Not-for-Profit%20Board%20OAG.pdf
- Compass Point. Nonprofit Fiscal Policies & Procedures: A Template and Guide. June 2002. https://www.compasspoint.org/sites/default/files/documents/Guide%20to%20Fiscal%20Policies%20and%20%20Procedures.pdf

Module 6 Wrap Up and Reflection

Which category of internal controls is your Native CDFI handling well? Which could be improved? What new internal controls could you implement to improve it?

Activity: All Group Discussion

Do Native American beliefs and culture influence how Native CDFIs practice and communicate compliance?

NOTES:

Module 7 – Implementing Internal Controls

What are the Five Interrelated Components of Internal Control?

Internal controls help to ensure that we are doing the right job in the right way to achieve effective, efficient operations in the workplace in compliance with laws and regulations. Let's focus on the "How?"—how small CDFIs can implement a five-step process to follow when developing and implementing effective internal controls in an organization:

- Step 1: Establish an Appropriate Control Environment
- Step 2: Assess Risk
- Step 3: Implement Control Activities
- Step 4: Communicate Information
- Step 5: Monitor

Step 1: Establish an Appropriate Control Environment

The control environment deals with whether all levels of the organization are committed to integrity and demonstrate it in their day-to-day work. One of the key questions in this area is: *"What is the structure of responsibility and authority at the organization?"* This part involves everything from authorizing spending based on a predetermined signatory policy to periodic employee performance and program performance reviews by appropriate levels of management.

Improving the control environment typically requires senior management and the board to set the tone from the top and communicate expectations for the rest of the organization. Processes and policies of the organization should be evaluated periodically in light of those expectations.

Step 2: Assess Risk[10]

In the context of internal controls, a "risk assessment" addresses ways to ensure that a CDFI has plans in place to identify, analyze, and respond to a variety of risks. Management must be aware of and deal with risks the organization faces and establish mechanisms to identify, analyze, and manage the related risks.

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[10] Risk assessment is covered in more detail in module 8.

Food for Thought

If someone working on your federally sponsored program committed fraud—either financial or some other type—how would you detect it and respond to this risk? If you experienced the loss of a major funding source due to grant mismanagement, how would your organization respond to these types of changing and challenging conditions?

Step 3: Implement Control Activities

Internal control activities are the tasks that can minimize the likelihood of waste, fraud, and abuse. Control policies and procedures are established and executed to help ensure that management directives are carried out. The following actions will help you institute effective internal controls.

- **Establish procedures for monitoring assets:** Every organization should have procedures to monitor and record assets received, held, and expended. These financial controls should be described in an accounting policies and procedures manual. The manual should be reviewed by and distributed to all directors and officers, trustees, employees, and volunteers. A few examples of internal controls are listed below.

- **General organization-level controls.** Organizations should prepare an annual income and expense budget as well as quarterly (preferably monthly) reports that compare actual receipts and expenditures to the budget. Reports should include timely variance explanations.

- **Information technology general controls.** IT controls should specify protocols for accessing, inputting, and changing electronic data maintained by the organization; for preserving electronic records, ensuring data compatibility, and creating a records retention policy; and securing competitive bids from vendors and approving contracts.

  Your organization can quickly lose trust if your database is hacked and client records are uploaded to the Internet or a malicious virus is launched and corrupts your financial reporting system. Here come internal controls to the rescue! You can strengthen IT internal controls by: (1) requiring passwords be changed every 90 days; (2) providing access to a password manager like Dashlane or KeyPass; and (3) implementing software that includes strong user security sophisticated enough to configure user-specific rights and limit access where needed.

- **Segregation of duties.** Effective checks and balances hinder embezzlement by segregating duties. No single individual should be responsible for writing and signing checks or vouchers and receiving, recording, securing, and depositing cash and other receipts. These functions should be assigned to different individuals.

- **Sarbanes-Oxley Act.** All nonprofit organizations should establish a confidential and anonymous mechanism to encourage employees to report inappropriate financial management. At the same time, organizations should develop procedures for handling employee complaints so that no retaliation—including firing, demotion, suspension, harassment, failure to consider for promotion, or any other discrimination—is permitted.

- **Revenue.** The organization should properly record grants and contributions, complete all accounting required as a condition of grants, and comply with restrictions or prohibitions on the use of grant funds and the principal of an endowment.

- **Purchasing and accounts payable.** No single individual should be permitted to request, authorize, verify, and record expenditures, including payment of invoices, petty cash, and other expenditures.

- **Reconciling the bank statement.** This step is crucial. Reconciling the bank statement means that embezzlement cannot go on for very long. Ideally someone other than the bookkeeper (or whoever handles the money) reconciles the bank account from an unopened statement. That's a strong check on the person who handles the money. In a small nonprofit, however, there may not be a bookkeeper, and there may be only one person who does everything. In these instances, someone else, such as a board member, should receive the unopened bank statement and look it over before giving it to the bookkeeper or the sole staff person.

- **Define roles in the organization:** Create written job descriptions for board members, staff, and consultants. Clear expectations and limits of authority facilitate work and problem solving. Likewise, all other employees should have written job descriptions and be advised of what is expected of them. Volunteers, as well, should be given job descriptions that describe expectations. Failure to understand responsibilities or to act professionally puts the organization at risk.

- **Record the organization's personnel policies:** Personnel policies should be in writing and provided to all employees prior to hiring. These include vacation and sick leave, health insurance and other benefits, evaluations, ordinary and overtime compensation, conflicts of interest and code of ethics, and grievance procedures (including protections for whistleblowers). Changes in policies should be communicated on a regular basis.

- **Adopt a conflict of interest policy and code of ethics:** Board members, staff, and consultants who serve a nonprofit organization should not have any personal or business interests that may conflict with their responsibilities to the organization. The organization should have a conflict of interest policy that clearly states the procedures to be followed if a board member's interests may be advanced by a board action. The conflict of interest policy should require full disclosure of individual or family interest in any entity that does business with the organization.

  The organization should also have a code of ethics addressing issues such as transparency, disclosure in fundraising solicitations, integrity in governance, and diversity. All board members, employees, volunteers, and consultants should be given copies of policies and be required to sign a statement acknowledging that they have read them. The organization should emphasize the importance of ethics and controls at staff meetings and demonstrate that everyone follows the rules all the time.

Critical Resource: *Nonprofit Financial Management Self-Assessment Tool*[11], developed by the Nonprofit Association of Oregon is an excellent resource for small CDFIs that covers the essential areas of financial internal controls. This resource is attached as **Appendix C**.

Step 4: Communicate Information

Good communication is an important part of successful grant management and internal controls. What happens in an organizational culture that allows for silos between the finance team and the program staff? Specifically, what could occur when the program team reports numbers that are not coordinated with the financial results? That's an internal control risk waiting happen!

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[11] Nonprofit Association of Oregon, Nonprofit Financial Management Self Assessment Tool, https://nonprofitoregon.org/sites/default/files/uploads/file/Fin Mgmt Self Assessment.pdf

Food for Thought

If you were rating the flow of information and communication at your organization, where would you rank the quality of the information and level of communication?

Step 5: Monitor

The entire process must be monitored, and modifications must be made as necessary. This way, the system can react dynamically, changing as conditions warrant. Proper oversight is necessary to assess whether employees at your organization are really following the internal control requirements that have been adopted and if the system is working as anticipated.

As common recipients of federal grants, Native CDFIs should ask questions such as:

- Are program managers reviewing timecards to ensure that employees are not recording paid time off to grant activities?

- Is the accounts payable clerk reviewing the receipts on expense reports to ensure that they meet the requirements for sufficient documentation and no unallowable costs are charged to the grant?

Getting Everyone on Board with Internal Controls

As part of your commitment to educating staff on your compliance policies, you may want to consider the following:

- **Does everyone in your nonprofit (including board members) know how money moves through the organization?** Creating a flowchart will help everyone visualize the journey, which can also prompt discussion about who is responsible at which stages and where internal control weaknesses could exist.

- **Know what documentation you should be keeping and be consistent.** Adopting a written policy helps everyone know what the expectations are, such as for requesting reimbursements. Examples: Reimbursement of expenses over $5 requires a receipt; all vendors must submit invoices that include a detailed description of the services rendered.

- **Conduct a "surprise internal audit."** An unexpected examination of how cash and checks flow through the organization, and what vendors are receiving payments for, can deter fraudulent schemers. Also, make sure that a second person, besides the designated "bookkeeper," sees bank statements. This offers another layer of transparency and protection to the organization.

A best practice is that on an annual basis, your organization should assess the control structure to determine if significant changes are necessary. For example, employees that are performing the controls may change or additional employees may be hired if the organization were to expand. All members of your organization—and that includes contractors—must understand why compliance matters.

Every organization is unique and requires a custom-tailored system of internal controls; therefore, management must use judgment in determining which internal control procedures are necessary for mitigating risk at their organizations.

Additional Resources

- National Council of Nonprofits. *We're a small nonprofit. What internal controls do we need to have in place?* https://www.councilofnonprofits.org/thought-leadership/we%E2%80%99re-small-nonprofit-what-internal-controls-do-we-need-have-place
- Minnesota Council of Nonprofits. "Financial Management." https://www.minnesotanonprofits.org/resources-tools/principles-practices-for-nonprofit-excellence/financial-management
- "How to Lessen Segregation of Duties Problems in Two Easy Steps", Charles Hall. https://cpahalltalk.com/how-to-overcome-segregation-of-duties/

- "Nonprofit Controls and How to Make them Work for You." FMA. https://fmaonline.net/2017/03/14/nonprofit-controls-and-how-to-make-them-work-for-you/

Module 7 Wrap Up and Reflection

Is everyone "on board" with internal controls at your Native CDFI? If not, how could you help them understand the importance of your internal controls?

Module 8 – Risk Management

What is Risk?

Risks can be broadly conceptualized into two categories:

1. **Threat risks, or risks an organization should usually seek to avoid**. Threat risks can result in fines, penalties, liabilities or even loss of tax exemption and can be operational, legal, financial, or related to the investments of the organization. Nonprofits generally face the following broad types of threat risks:

    - Internal or external fraud
    - Misuse of assets
    - Inadequate monitoring or understanding of investments
    - Incomplete, unreliable, or improperly reported information
    - Damage to reputation caused by a variety of potential factors
    - Violation of legal requirements
    - Government investigations or audits

2. **Calculated risk, which an organization may choose to embrace**. Calculated risks include the risk that an underlying program objective or strategy may not succeed or that the investment or financial performance necessary to sustain the organization cannot be achieved. Put another way, these are risks your organization may be willing to take because they align with your mission and the possibility of reward/impact outweighs the risk.

For CDFIs, threat risks and calculated risks are core to our mission and inherent in our business model. We make loans to low-income, low-wealth, underserved people and communities.

- **Do CDFIs present a greater risk of institutional failure? Yes/No**
- **Do CDFIs present greater vulnerability to mortgage market downturns? Yes/No**
- **Do CDFIs present greater risk of being less efficient than mainstream financial institutions? Yes/No[12]**

[12] Risk and Efficiency among CDFIs: A Statistical Evaluation using Multiple Methods, https://www.cdfifund.gov/Documents/Risk%20and%20Efficiency%20among%20CDFIs%20Report.pdf

Nonprofits Have a Responsibility to Identify and Mitigate Risk

"A charitable organization's board should ensure that the organization has adequate plans to protect its assets – its property, documents and data, financial and human resources, programmatic content and material, and its integrity and reputation – against damage or loss. The board should review regularly the organization's need for general liability and directors' and officers' liability insurance, as well as take other actions necessary to mitigate risks...The board members of a charitable organization are responsible for understanding the major risks to which the organization is exposed, reviewing those risks on a periodic basis, and ensuring that systems have been established to manage them."

-Independent Sector Principles for Good

"Every nonprofit organization needs to create a risk management plan and review it annually. The organization should also review its plan after making a significant change to the types of activities it engages in, or when acquiring a piece of property, a new computer system, or other significant asset."

-District of Columbia Bar and Public Counsel

"[G]reater risk awareness is becoming an expected best practice in overall governance of an organization...Because some of the calls for greater risk awareness appear to be coming from voices associated with for-profit corporations, some may naively conclude more effective risk oversight is a corporate issue that isn't relevant to not-for-profits. That perspective is dangerously wrong."

-American Institute of Certified Public Accountants

18 Types of Business Risk

(adapted from https://simplicable.com/new/business-risk)

1. **Competitive Risk -** The risk that your competition will gain advantages over you that prevent you from reaching your goals.
2. **Economic Risk -** The possibility that the economy will increase your costs or reduce your sales.
3. **Operational Risk -** The potential failures related to the day-to-day operations/processes of an organization.
4. **Legal Risk -** The chance that new regulations will disrupt your business or that you will incur expenses and losses due to a legal dispute.
5. **Compliance Risk -** The chance that you will break laws or regulations. In many cases, a business may fully intend to follow the law but ends up violating regulations due to oversight or errors.
6. **Strategy Risk -** The risks associated with a particular strategy.
7. **Reputational Risk -** The chance of losses due to a declining reputation as a result of practices or incidents that are perceived as dishonest, disrespectful, or incompetent.
8. **Program Risk -** The risk associated with a particular business program or portfolio of projects.

9. **Project Risk -** The risk associated with a project. Project management methodologies are designed to mitigate this type or risk.
10. **Innovation Risk -** This risk applies to innovative areas of your business.
11. **Quality Risk -** The potential that you will fail to meet your quality goals for your products, services, or business practices.
12. **Credit Risk -** The risk that those who owe you money will fail to pay.
13. **Interest Rate Risk** - The risk that changes to interest rate will disrupt your business.
14. **Taxation Risk -** The potential for new tax laws or interpretations to result in higher than expected taxation.
15. **Process Risk -** The business risks associated with a particular process (or in some cases, lack of process).
16. **Resource Risk -** The chance that you will fail to meet your business goals due to a lack of resources such as financing or staff capacity.
17. **Political Risk -** The potential for political events and outcomes to impede your business.
18. **Seasonal Risk -** The vulnerability a business has when it has revenue concentrated in a single season, such as a ski resort.

Food for Thought

From your perspective, which of the above risks are most relevant to your Native CDFI? Which are the least relevant? Are there any additional risks that should be added to this list? Have a quick discussion about this at your table and jot down some of your thoughts here. We'll come back to this a little later.

CDFI Implementation Tip

Loan Fund Assessment and Risk Rating – You're already doing risk assessment!
As lenders, you are really good at evaluating the risk of your borrowers. It is time to put that same lens on when evaluating your organization. Remember, funders may look at you through that lens when they are making funding decisions!

Goals of a Risk Assessment

Nonprofit organizations face different types of risks than for-profit companies, but the goals of a risk assessment should be similar:

- To identify, analyze and prioritize legal/ethical misconduct and compliance risks specific to the operations and culture of the organization
- To provide a basis for possible compliance, training, and ethics programs
- To refine or develop risk mitigation and monitoring strategies
- To identify areas where deeper internal reviews would be warranted
- To develop a benchmark for ongoing risk assessment and measurement of the effectiveness of mitigation steps that may be taken

How to Perform a Risk Assessment

Use the risk matrix in **Appendix D** as guidance as you follow the steps below.

1. **Name Potential Risks -** This is going to primarily be a focused conversation among key staff and board members. You can use the list on the first column of the Risk Matrix to guide this conversation.

2. **Talk to Other Staff -** Get input from those who know the processes the best to validate the assumptions you had about the risks facing your organization.

3. **Rate the Risk to Assess Likelihood and Severity of Impact**

   The following "Likelihood Scale" can be utilized to make this assessment:

Highly Likely	This event is expected to occur with a high degree of certainty
Likely	Strong possibility that an event will occur and there is sufficient historical incidence to support it
Possible	Event may occur at some point – typically, there is history to support it
Unlikely	Not expected but there is a slight possibility it may occur
Rare	Highly unlikely, but it may occur in unique circumstances

   A judgment on the severity of impact can be made using the following scale: Minor, moderate, or severe. In assessing the severity of a particular risk, the following factors might be considered:

   - Possible fines and civil or criminal penalties
   - Impact on the manner and ability of the organization to continue to operate
   - Impact on the reputation of the organization
   - Impact on employees and possible loss of employees
   - Costs of compliance

4. **Identify the Highest Priorities -** Based on the likelihood and severity assessment, choose the risks that should be addressed first.

5. **Develop a Plan to Address or Mitigate the Priority Risk(s) -** Potential mitigation strategies include:

   - Segregate duties
   - Set payment controls
   - Conduct due diligence and legal review
   - Conduct audits (internal and external)
   - Implement and follow strong internal policies/processes
   - Conduct training

Finally, Don't Get Overwhelmed!

This is a lot. You can't and shouldn't tackle it all at once.

When designing your compliance program, focus on addressing the top three risks. Reassess each year and then prioritize mitigating the next three risks. Continue to build on a firm foundation.

CDFI Implementation Tip

Use your risk assessment and risk management strategy to answer the CDFI Financial Assistance (FA) or Technical Assistance (TA) questions about risks and mitigation plans.

Financial Assistance Application: Identify and discuss any risk that may inhibit your CDFI from achieving its FA Objectives and strategic goals for the next five years. Discuss how your CDFI will mitigate those risks.

Technical Assistance Application: Identify and describe the financial and programmatic risks associated with your ability to expend the requested TA award and ability to achieve your strategic goals. Explain how you will mitigate each identified risk.

Activity: All Group Discussion

Let’s look at the risks you identified in your table discussion earlier and do a risk assessment on them as a group. After we prioritize them, we’ll brainstorm action steps that could be taken to mitigate the risk. Are there new policies or procedures or internal controls that could be developed?

NOTES:

Additional Resources

- Riskalts.com has some great free materials risk management materials, but you'll need to enter your email address, https://riskalts.com/free-nonprofit-risk-management-materials/
- Venable LLP, The Top 10 Legal Risks Facing Nonprofit Boards, https://www.venable.com/insights/publications/2011/02/the-top-10-legal-risks-facing-nonprofit-boards
- Nonprofit Quarterly, Risky Business: Why All Nonprofits Should Periodically Assess Their Risk, https://nonprofitquarterly.org/risky-business-why-all-nonprofits-should-periodically-assess-their-risk/
- National Council of Nonprofits, Internal Controls for Nonprofits, https://www.councilofnonprofits.org/tools-resources/internal-controls-nonprofits
- U.S. Department of Justice Criminal Division, Evaluation of Corporate Compliance Programs Guidance, https://www.justice.gov/criminal-fraud/page/file/937501/download
- Mills Legal Clinic at Stanford Law School, Compliance Resources, https://nonprofitdocuments.law.stanford.edu/document/corporate-compliance/
- Best Practices Checklist for Nonprofits, https://www.in.gov/attorneygeneral/files/checklist_cover_your_assets_8_29.pdf
- Stanford Social Innovation Review; Risk, Trust, and Impact: Connecting the Dots; https://ssir.org/articles/entry/risk_trust_and_impact_connecting_the_dots#

Module 8 Wrap Up and Reflection

What are the first three risks that come to mind when you think about your organization? How would the lead staff or board member in a different function than yours answer that question?

Module 9 – Strategies to Improve Your Compliance Program

Activity: All Group Discussion

At your table, in the next five minutes, create a list of specific challenges to effective compliance programs that Native CDFIs face.

As a large group, let's list the challenges we came up with and brainstorm strategies for addressing them.

NOTES:

What is “Tone at the Top?”

The tone at the top defines the level of commitment by management and the board of directors to having an open, honest, and ethically correct corporate culture. This is a key element of an organization's system of controls, for proper support from the top provides a robust foundation for controls. Conversely, if employees see dishonesty and unethical behavior at the top of the organization, they will be much less likely to support the system of controls and will be more likely to engage in fraudulent activities. In short, employees pay close attention to the actions of their supervisors and will tend to mimic their behavior.

Strategies to Improve Your Native CDFI’s Corporate Compliance Program

Establishing effective policies and procedures does not begin and end with regulations. It takes the right amount of collaboration and the right methods to measure understanding.

Here are seven strategies to ensure compliance.

1. **Identify organizational values.** Your organization’s values act as a road map, establishing culture, ideals, and goals. Without identifying those values, building a culture of compliance can be like baking a cake without a recipe. It doesn't make sense. Once you identify your values, you can begin to build a culture of compliance around them.

2. **Encourage accountability.** Successful teams learn from their mistakes. Learning involves recognizing that performance is not where it needs to be and taking action to fix it. The same model works for compliance: Everyone in the workplace needs to be able to identify when behaviors don't match up with values and take action to correct them.

3. **Go beyond "anti-" and teach "understand."** Having an "anti-" message can take you only so far. Telling people not to do something tends to be less effective when they don’t understand the behavior. You need to teach your people how and why those behaviors take root. For example, don't just tell them not to engage in harassment; instead, teach the understanding behind why it happens and how to identify it. Then, you have a higher chance of preventing it from happening.

4. **Teach what you *should* do, not just what you shouldn't.** Along the same lines as #3, organizations should focus not only on what employees should not do, but on what the proper behaviors are to adopt instead. Giving employees concrete actions to model and perform, as opposed to harping on what they aren't allowed to do, will get more buy-in and help them zero-in on appropriate behavior more quickly.

   Here are some examples:

   - You *should* keep closed all client files on your desk.
   - You *should* wait until the loan committee has approved the loan before telling your client.
   - You *should* manage the loan portfolio like it was your own money.
   - You *should* treat everyone like your mom is watching you.

- You *should* wait at least 30 minutes before getting in the pool after eating.

Notice that each of these could have been stated as a "do not" sentence. Phrased as a "should" sentence, they help provoke a mental image of what the proper behavior is, which makes it easier to remember and carry out.

5. **Eliminate the stigma around difficult topics.** Some topics are just uncomfortable to discuss. Still, being uncomfortable for a few minutes is a small price to pay for bringing certain issues to light. There is often a fine line between acceptable, friendly behavior and unacceptable harassment. That line will not be clear to everyone, and so you need to make it explicit. You can make these conversations easier by removing the stigma around topics such as sexual harassment. Don't limit its discussion to small meetings behind closed doors.

6. **Offer both manager-and employee-specific training.** The compliance training needed for managers often looks different from that needed by loan officers and TA specialists. If nothing else, both will have their own specific roles and responsibilities when it comes to compliance topics, and so each training needs to be handled differently. Managers are also in a unique position to potentially abuse their power. It is well worth sending them the message that certain kinds of behavior will not be tolerated, even from management.

7. **Don't just check the box.** Again, compliance is so much more than just "checking the box." Ask questions to find out what is going on in the workplace. Let people share what they are experiencing. It starts by changing the mindset from "checking the box" to one of valuing and protecting employees.

   Finally, realize that you are not alone in this endeavor. A culture will not, and cannot, change overnight, but you can start the process of change by sharing these ideas with your team and implement a few at a time within your organization.

Activity: Breakout Exercise

Around the room you see two desks. They are cluttered with office supplies, so they look like they are in use.

Dividing into two groups, identify specific compliance risks.

The team that identifies the most issues will get a prize.

NOTES:

Answers:

- An open loan file with personal information (privacy/confidentiality)
- A bag from a high-end store, with a note that reads “To my favorite government employee” in easily-readable lettering (gifts & entertainment/conflicts of interest)
- A candle (fire hazard)
- A flash drive marked “Financials” (privacy/confidentiality)

Incorporating exercises like these into your compliance training program will build employee engagement and ownership.

Additional Resources

- Business Ethics Resources - https://www.ethicssage.com/ethics-resources.html
- How To Build A Compliance Program That's Right Sized For Your Organization. https://www.lifescienceleader.com/doc/how-to-build-a-compliance-program-that-s-rightsized-for-your-organization-0001
- How to Improve Compliance in a Company. https://reciprocitylabs.com/how-to-improve-compliance-in-a-company/
- Definitive Guide to Compliance Program Assessment. https://www.acc.com/sites/default/files/resources/20190314/1498418_1.pdf

Module 9 Wrap Up and Reflection

Which of the seven strategies described above are you already utilizing well? Which could use some improvement?

Module 10 – Developing an Effective Grants Management System

The What? And Why? of Grants Management

At the most basic level, grants management is an integrated system of processes and practices that ensures your organization is staying in compliance with the terms of the grant, following through on all the deliverables, and submitting reports according to the funder's requirements.

More sophisticated grants management systems do more than just ensure that you stay in compliance with grantor requirements and encompass all five phases of the grant cycle:

- **Prospecting -** Identification of potential funding sources that will support your strategic priorities and programs
- **Application -** Development and submission of your grant application and tracking and documentation of submitted proposals
- **Contracting -** Notification and acceptance of the grants you receive
- **Award Period -** Implementation and tracking of received grants
- **Closeout –** Following processes after the grant period ends

Grants management means working with all the key stakeholders in your organization to develop your strategy around grants, identify grant opportunities, implement specific grant awards, evaluate successful projects, and streamline future proposals.

According to SmartSheet[13], the benefits of an effective grant management system include the following:

- **"Avoiding Frustration:** How often do you scramble to compile the report you need for your funder? You're not alone. Tracking and measuring grant progress is the greatest frustration among grant recipients, according to the 2015 State of Grant Management report by Amplifund. The good news is that grant management can help you track grant performance, keep stakeholders in the loop, and improve your ability to collect data and compile reports."
- **"Meeting Reporting Requirements:** Funders have all kinds of reporting requirements, from financial updates to progress checks. Grants management helps you identify at the beginning the information you'll need to track—and report back on it—as you implement the grant."
- **"Improving Your Grants Process:** Strong grants management, with clear leadership and well-defined roles and responsibilities, cuts down on inefficiency. You'll spend less time chasing data and more time reporting the successes of your organization, which can lead to receiving even more grants to fulfill your organization's mission."

[13] Smartsheet, Keys to Succeeding in Grants Management, https://www.smartsheet.com/grant-management

- **“Avoiding Complications and Penalties:** If you mismanage grants, you can expect a range of consequences for your organization. If you do not submit reports in a timely fashion or fail to meet the goals of the grant, you risk losing grant revenue and may limit the number of grants you can receive in the future. Additionally, as your organization grows, you’ll waste time and resources if you have a poor system for finding, tracking, and reporting on grants. A good system will result in greater efficiency and effectiveness.”

Activity: Small Group Discussion

- Does the structure of your Native CDFI, and its close relationship with your tribe complicate grants management functions? For example, do you rely on the tribal government to fill any grant writing or grant management/fiscal responsibilities?
- What features would a grants management system have to have to account for this structure?

NOTES:

Keys to Successful Grants Management

On the theoretical side, the Grantsmanship Center defines the following 4 Cs of Grants Management[14]:

1. **"Communication -** The most frequent grant management problems are the result of poor communication rather than ignorance of regulations. To make sure a grant-funded program stays on track, organizations must communicate thoroughly, regularly, and thoughtfully with board members, staff members, partner organizations, and the community."

2. **"Coordination -** When implementing grant-funded programs, it's not unusual for one hand to be ignorant of what the other hand is doing. Without solid coordination of effort, there will be miscommunication, overlap, dropped balls, and general chaos."

3. **"Cooperation -** There's no place for fiefdoms in grant management. Everyone has an important role to play and must cooperate fully with other players. When roles are clearly defined, and those involved behave in a collegial, professional manner, programming generally rolls out in an organized way and stays on course to accomplish the intended results."

4. **"Consistency -** Good intentions aren't enough. It does not matter that you intend to communicate, coordinate, cooperate, and maintain good records and files. What matters is whether you do it and do it regularly. Spurts of conscientiousness don't amount to much. Consistency does."

"When managing grants, it's necessary to follow the rules and regulations governing program implementation and business-related matters; however, that alone won't result in an effective, well-run program. The human, interactive side of grants management makes all the difference. Be sure the "4 Cs" identified above are integrated into your grant management plan." *–Barbara Floersch, Chief of Training & Curriculum for the Grantsmanship Center.*

Grants Management Roles/Accountabilities

From a compliance standpoint, the primary **roles** in grants management include the following:

- **Grant Writing** - responsible for proposal development and submission
- **Grant Management** - responsible for overseeing grant compliance, beginning with managing the grant acceptance process through grant closeout
- **Program Management** - responsible for implementing the program funded by the grant and meeting program goals and outcomes
- **Grant Reporting** - responsible for programmatic reporting
- **Grant Accounting** - responsible for managing the financial aspect of the grant and completing financial reporting

[14] https://www.tgci.com/blog/2018/05/4-cs-grant-management

For Native CDFIs, these roles may not all be held by organizational staff, due to close affiliations and shared staff with tribal governments or other tribal entities. Because of these increased complexities, clearly defined and communicated roles and a collaborative grant management system are critical to ensuring grant compliance.

CDFI Implementation Tip

Assigning grant reporting responsibilities to a grant writer or grant manager is not recommended, since the grant writer is not involved in the day-to-day implementation of the program and is not responsible for data tracking or managing the program. This responsibility should fall under a Program Manager, but it may be delegated to other program-focused staff. The grant writer may assist with copy editing a report narrative but should not be responsible for writing the report. However, as accountabilities are divided, make sure that they are clearly defined and communicated at the beginning of the grant.

Grants Management Systems and Processes

Effective grants management systems can range from a sophisticated Excel spreadsheet, digital file structure, and shared calendar to an off-the-shelf system to a custom-built tool. The sophistication of the system depends on the size of your organization, the number of grants you manage, and the complexity of your grants' requirements. In terms of compliance, it is essential that your organization has a system in place that follows every grant.

A basic grants management **system** should include the following:

- **Master Grant Spreadsheet** including:
    - Funder name
    - Grant amount
    - Award start and end dates
    - Login information for funder grant system (if applicable)
    - Funder contact information
    - Status of grant (current, pending, declined, completed)
    - Whether the grant is federal or federally-originated (to inform the audit and schedule of federal expenditures, if a Single Audit is required)

- **Individual Digital Grant Files** (with paper filed copies of original signed contracts signatures, if obtained)
    - Application
        - RFP/Application Documents
        - Drafts

        - Finals
    - Contract
    - Reports

- **Grant Reporting and Compliance Calendar** that is shared with accountable parties

Depending on your organization's size and complexity, these basic components may be segregated by program or accountability and/or expanded to meet additional compliance-related needs.

The system can be developed using readily available tools in Microsoft OneDrive or Google Drive.

If you choose to purchase a grants management system, first decide what level of functionality you would like your grants management software to support. Do you need it to manage your grant pipeline, or are you primarily looking for something to help you manage compliance requirements after the grant is received? Can you manage the budget outside of the system, or do you need budget management capabilities as well?

The basic **process** to be followed after notification of receipt of the grant should include the following:

- Executing the grant agreement (including providing requested documents, etc.)

- Adding/updating the grant to the Master Grant Spreadsheet

- Filing the grant in its digital/paper file

- Make it accessible to stakeholders, including executives, program units, fiscal, communications team, etc.

- Identifying/documenting compliance requirements

    - Programmatic reporting
    - Financial reporting
    - Funder recognition
    - Goals and outcome measures

- Calendaring reporting/compliance deadlines

- Conducting a grant kickoff meeting with all stakeholders at the table

    - Review program proposal, goals, and objectives
    - Review reporting requirements
    - Assign accountabilities

- Ensure program is adequately tracking and documenting required measures for reporting; if not, develop a tracking system

- Facilitating periodic compliance check-ins throughout the grant period

Additional Resources

- Smartsheet, Keys to Succeeding in Grants Management, https://www.smartsheet.com/grant-management
- Fluxx, Grants Management 101, https://grantseeker.fluxx.io/grants-management-101
- Capterra, 4 Free or Affordable Grants Management Systems, https://blog.capterra.com/free-grant-management-software/

Module 10 Wrap Up and Reflection

What is the most frustrating part of your current grants management system? Can you think of three to five things you could do to improve it?

Module 11 – Best Practices in Meeting the Compliance Requirements for CDFI Fund Awards and Certification

Certification Compliance Requirements

CDFIs must complete an Annual Certification and Data Collection Report (ACR).

Due no later than 90 days from FYE. Put it on your calendar!

CDFIs use data from their last complete fiscal year to complete the report. Please note that CDFIs may report unaudited financial data in their ACR submissions.

The ACR asks a series of questions to confirm that your organization still meets the Seven Certification Tests, including:

1. Legal Entity
2. Primary Mission
3. Financing Entity
4. Development Services
5. Target Market
6. Accountability
7. Non-Governmental Entity

You can find the ACR instructions for FY 2019 here, but remember to check the CDFI Fund's website for updates annually at www.CDFIFund.gov:
https://www.cdfifund.gov/Documents/ACR%20Instructions%20March%206%202019.pdf

CDFI Implementation Tip

The ACR is not listed in your reporting schedule in AMIS, so remember to mark it on your calendar each year.

Know Your Target Market

Your CDFI Certified Target Market is defined on your certification letter. You need to make at least 60% of your loans, both in number and volume, to your Target Market to stay in compliance!

Food for Thought

Do you know your CDFI Certified Target Market? What is it?

Understanding Your Assistance Agreement

As a CDFI awardee, your Assistance Agreement details all the requirements to stay in compliance with your CDFI award. This encompasses:

- Performance Goals & Measures, based on projections included in your organization's application
- Reporting Requirements
- Maintaining Financial Safety and Soundness
- Eligible Uses of Award Funds

The following documents from the FY 2019 funding round can serve as examples of assistance agreements associated with CDFI Fund FA or TA Grants. Keep in mind that these documents may change from year to year.

- **FA Assistance Agreement Template:** https://www.cdfifund.gov/Documents/FY%202019%20FA%20Assistance%20Agreement%20Template.pdf

- **TA Assistance Agreement Template:** https://www.cdfifund.gov/Documents/FY%202019%20TA%20Assistance%20Agreement%20Template.pdf

Financial Assistance Requirements

1. **Performance Goals and Measures:** defined in the Assistance Agreement

2. **Eligible Uses of an FA award, which include:**

    - Financial products
    - Financial services (Insured CDFIs and State-Insured Credit Unions only)
    - Development services
    - Loan loss reserve
    - Capital reserves (Insured CDFIs and State-Insured Credit Unions only)
    - Direct Administrative Expenses (up to 15% of award)

3. **Maintaining Financial Safety and Soundness:** The following may constitute an event of noncompliance: a Material Weakness, a qualified opinion, or any statement in the Recipient's annual audited financial statements that evidences a failure of the Recipient to be financially sound, be managerially sound, and/or maintain appropriate internal controls

4. **Required Reports / due dates for FA grants include:**

    - Financial Statement Audit Report (if applicable) - within 180 days of FYE

- A-133 Single Audit (only if recipient is required to conduct a Single Audit) - within 270 days of FYE
- CDFI Transaction Level Report (TLR)
- Uses of Award Report (FY 2015 and newer awards) - Within 90 days of FYE
- Performance Progress Report (PPR) (FY 2015 and newer awards) - Within 90 days of FYE
- Shareholders Report when award is in the form of an Equity Investment - Within 180 days after FYE
- Explanation of Noncompliance (as applicable)

Reporting Guides:

- TLR Reporting Guide - https://www.cdfifund.gov/Documents/CDFI TLR Guidance, August 2019.pdf
- Uses of Award Report Form - https://www.cdfifund.gov/Documents/Uses of Award Report Form for Comment.pdf

Technical Assistance Requirements

1. **Performance Goals and Measures:** defined in the Assistance Agreement

2. **Eligible Uses of a TA award, which include:**

    - Compensation (Personal Services)
    - Compensation (Fringe benefits)
    - Training and Education
    - Travel Costs
    - Professional Services
    - Equipment
    - Supplies
    - Incorporation Costs (*Sponsoring Entities only*)

3. **Maintaining Financial Safety and Soundness:** The following may constitute an event of noncompliance: a Material Weakness, a qualified opinion or any statement in the Recipient's annual audited financial statements that evidences a failure of the Recipient to be financially sound, be managerially sound and/or maintain appropriate internal controls

4. **Required Reports / due dates for TA grants include:**

    - Financial Statement Audit Report (if applicable) - Within 180 days after FYE
    - A-133 Single Audit (only if recipient is required to conduct a Single Audit) - Within 270 days after FYE
    - SF-425 – Federal Financial Report Uses of Technical Assistance (FY 2018 and older awards) - Within 90 days of FYE
    - Uses of Award Report (For FY 2015 and newer awards) - Within 90 days of FYE

- Performance Progress Report (PPR) (FY 2015 and newer awards) - Within 90 days of FYE
- Explanation of Noncompliance (as applicable)

These reports are designed to measure your compliance with the PG&Ms, Use of Award, and Financial Safety and Soundness requirements.

Navigating AMIS

ACR Submission (last updated 2016):

- https://www.cdfifund.gov/Documents/CDFIFundAMISTrainingManualAE103ACR.pdf

TLR Report Submission and AMIS Training Manual for FA/TA Report Submission (2019):

- https://www.cdfifund.gov/Documents/CDFI%20TLR%20Guidance,%20August%202019.pdf
- https://amis.cdfifund.gov/s/AMIS-ComplianceTrainingManual_FinalVersion.052019.pdf?v=1

What about Material Events?

What is a Material Event?

The CDFI Fund defines a "*Material Event*" as an occurrence that affects an organization's strategic direction, mission, or business operation and, thereby, its status as a certified Community Development Financial Institution (CDFI) and/or its compliance with the terms and conditions of its Assistance Agreement.

For CDFIs, examples of Material Events[15] include:

- A merger, acquisition, or consolidation with another entity
- A change in the organization's legal status (e.g., dissolution or liquidation of the organization, bankruptcy, receivership, etc.)
- An event which materially changes the strategic direction, mission, or business of the organization such that the organization no longer meets a certification requirement (e.g., no longer providing Financial Products or Development Services)
- An event which materially changes the organization's balance sheet composition such that Financial Products no longer represent 50% or more of its total assets
- An event which materially changes the organization's tax and/or corporate structure (e.g., changing from for-profit to nonprofit status)
- An event that results in a change in control of the organization (e.g., control by, controlling relationships, loss of control - as such term is defined in the Assistance Agreement - by any entity that is a party thereto)
- An event that results in the organization being a government entity or controlled by a government entity (as such term is defined in the CDFI Program regulations)

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[15] CDFI Fund, Frequently Asked Questions (FAQ): Material Events Occurrence and Reporting, https://www.cdfifund.gov/Documents/CDFI%20Cert%20Material%20Events%20FAQ.pdf

- An event in the market served by the organization such that its previously certified Target Market is now less than 60% of the organization's annual activities (i.e., number or volume of loans; number of Development Services clients)
- An event in the composition of the organization's Board of Directors (or other governing body) such that the percentage of the governing or advisory board members representing the organization's Target Market is diminished or altered
- Relocation of the organization's primary office to another state which alters the organization's ability to serve or be accountable to its Target Market (based on its most recent certification prior to the relocation)
- Any other event determined by the CDFI Fund, in its sole discretion, to constitute a Material Event

Once an organization has entered into an Assistance Agreement with the CDFI Fund, the following are also considered Material Events:

- A proceeding instituted against the awardee in, by, or before any court, governmental, or administrative body or agency, which proceeding or its outcome could have a material adverse effect upon the operations, assets, or properties of the awardee as it relates to any Assistance Agreement
- A material adverse change in the condition, financial or otherwise, or operations of the awardee that would impair the awardee's ability to carry out the authorized uses of the assistance/allocation
- Loss of the awardee's Insured Credit Union existence as defined in 12 U.S.C. § 1752(7) (if applicable)
- An Event of Default, as that term is defined in Section 6.1 of the Assistance Agreement, or any event which upon notice or lapse of time, or both, would constitute an Event of Default
- Loss of the awardee's Depository Institution Holding Company existence under 12 USC § 1813(w)(1) or Insured Depository Institution existence under 12 USC § 1813(c)(2) (if applicable)
- A change in the awardee's shareholders or organization that results in (i) the CDFI Fund's ownership of equity in the awardee exceeding 50 percent and/or (ii) the CDFI Fund controlling the awardee's operations
- The debarment, suspension, exclusion, or disqualification by the Department of Treasury, or any other Federal department or agency, of any individual or entity (or principal thereof) that received any portion of the assistance/allocation in a procurement or nonprocurement transaction, as defined in 31 C.F.R. §19.970

The list above provides examples of Material Events that should be reported to the CDFI Fund on the Certification of Material Event Form. Please note these examples may not apply to all covered entities and this list may not be exhaustive. If you have questions regarding an event that is not listed in this document, you may contact the CDFI Fund's staff at cdfihelp@cdfi.treas.gov for additional guidance.

What should I do if my organization experiences a Material Event?

Submit the Certification of Material Event form as a Service Request, in AMIS, within 30 days of occurrence: https://www.cdfifund.gov/Documents/CDFI Fund - Material Event Form (July2019).pdf

The failure to file a timely report is considered noncompliance with the terms and conditions of agreements and may be deemed a default or noncompliance under the applicable agreement.

Module 11 Wrap Up and Reflection

Where could you go to get support or answers to your questions on CDFI Fund Compliance Requirements?

Appendices

Appendix A. Sample Policies

Appendix B. Recommended Records Retention Timeframes

Appendix C. Nonprofit Financial Management Self-Assessment Tool

Appendix D. Risk Matrix