

EXPLORING THE IESBA CODE

Installment 8: Responding to Non-Compliance with Laws and Regulations [for PAIBs]



A distinguishing mark of the accountancy profession is its acceptance of responsibility to act in the public interest. Professional accountants might come across situations where they determine, or suspect, that their employing organization or a client is not compliant with laws or regulations. The Code's fundamental principles of integrity and professional behavior require accountants to respond to non-compliance with laws and regulations (NOCLAR) by taking appropriate action, putting the interests of the public first.

When a [PAIB](#) becomes aware of, or suspects that NOCLAR has occurred or might occur, the PAIB is required to take action on a timely basis, having regard to the nature of the matter and the potential for harm to the employing organization, investors, creditors, employees and the general public. The PAIB needs to:

- Understand and comply with the Code as well as legal and regulatory provisions in their jurisdiction that differ or go beyond those in the Code (e.g., requirements to report the matter to authorities, or prohibitions on alerting the employing organization that action is being taken).
- Consider any existing protocols and procedures within their organization that offer guidance to address NOCLAR (e.g., ethics and whistleblowing policies).

Examples of relevant laws and regulations include those that deal with:

- Fraud, corruption and bribery
- Banking and other financial products/services
- Data protection
- Environmental protection
- Securities markets and trading
- Money laundering, terrorist financing and proceeds of crime
- Tax and pension liabilities/payments
- Public health and safety

What about confidentiality?

- Disclosure of NOCLAR to an appropriate authority will not be considered a breach of the duty of confidentiality with respect to the PAIB's employer.
- The PAIB must act in good faith and exercise caution when making statements and assertions.

Obligations of a PAIB are based on role/seniority

The Code recognizes that different roles within an organization come with different levels of influence, authority, and access to information. Accordingly, a higher level of obligation is placed on [Senior PAIBs](#) because they are decision-makers who can exert significant influence in their organizations. A Senior PAIB could have the title of CFO or VP of Finance, but more important than a title is the level of influence that the individual exerts. More junior PAIBs who don't have the same degree of influence, have proportionately lower obligations if they become aware of, or suspect NOCLAR.

CONSIDER THE FOLLOWING SCENARIO:

A large international manufacturing company has developed an AI tool to pre-screen candidates for job placements. However, the data being captured by the system is also being sold to a data broker without the knowledge or consent of the interviewees. This is not in compliance with the local jurisdiction's data protection laws. If a PAIB becomes aware of, or suspects, this is occurring or might occur, they have an obligation to take action.

THE SPECIFIC ACTION THAT THE PAIB IS REQUIRED TO TAKE VARIES DEPENDING ON THEIR ROLE AND LEVEL OF SENIORITY.

Senior PAIB:

If the company's CFO overhears a discussion between staff suggesting that the company's system is non-compliant with the law, the CFO should:

- Obtain an understanding of the matter, including the nature and circumstances of the AI system and its use, how data protection laws apply in this context, and the consequences for the organization and stakeholders. For example: What are the impacts for interviewees? Would the company be subject to significant fines or reputational damage?
- Address the matter by discussing it with an immediate superior, such as the CEO, and take steps to:
 - Have the matter communicated to [those charged with governance](#), such as the Board of Directors.
 - Launch an internal investigation.
 - Comply with applicable laws and regulations, including reporting requirements, if any.
 - Have the consequences rectified, remediated or mitigated, for example, by disclosing the matter to previous interviewees and providing them with assistance to mitigate any harm caused. Determining a plan will likely benefit from the advice of legal counsel or other experts.
 - Reduce the risk of re-occurrence by advising the CEO that the sale of data should be immediately halted unless informed consent has been achieved and all other legal requirements have been met.

ADDITIONAL STEPS THE CFO MIGHT BE REQUIRED TO TAKE

- Determine whether to disclose the matter to the company's external auditors as part of management's duty to provide relevant audit information.
- Assess the appropriateness of the company's response.
- Exercise professional judgement in determining if further action is needed. This involves taking into account whether a [reasonable and informed third party](#) would believe that the CFO has acted appropriately in the public interest.

Further action could include disclosing the matter to appropriate authorities, even if there is no legal obligation to do so, and, depending on the situation, resigning from the company. Resigning is not a substitute for taking required actions.

Non-Senior PAIB:

If the issue was suspected by a more junior PAIB (e.g., an accounts receivable clerk) while reviewing documentation on the data broker's file, they would be expected to:

- Seek to obtain an understanding of the matter.
- Address the matter by discussing it with their immediate superior, or the next higher level of authority in the company if the immediate supervisor was involved.



In case of an imminent breach of a law or regulation that would cause substantial harm to investors, creditors or the general public, the PAIB may decide to immediately disclose the matter to an appropriate authority in order to mitigate the consequences of such a breach.

WHERE TO GET ASSISTANCE?



The NOCLAR provisions for PAIBs are set out in **Section 260**. The IESBA **Support & Resources** webpage includes helpful guidance for PAIBs, including a NOCLAR Fact Sheet, IESBA Staff Q&As and videos that explain NOCLAR from a variety of perspectives. Also, the IESBA website includes a comprehensive **NOCLAR webpage**.



The eCode, which is available at www.IESBAeCode.org, is an on-line resource for accountants and other users of the Code. It provides quick and efficient access to the Code, making it easier to use, implement, and enforce.