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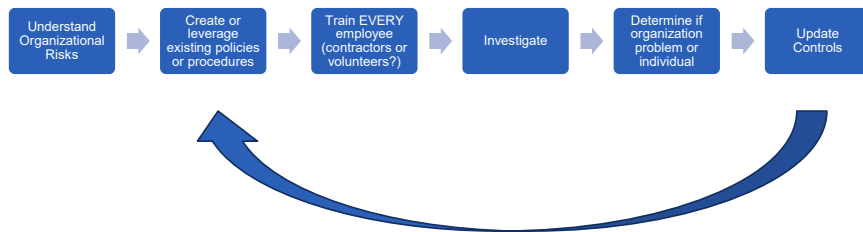
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The Seven Elements of Effective Compliance in a Complex World

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Compliance Lifecycle



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US Federal Sentencing Guidelines for Organizations

1991

The United States Sentencing Commission implemented **strong incentives** for a company to earn credit for an **effective** corporate compliance program. The commission set organizational sentencing guidelines.

2010

The guidelines were amended adding the requirement for companies to establish a **senior-level compliance officer** in order to earn credit for an effective corporate compliance program.



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US Federal Sentencing Guidelines for Organizations

2019

“ The starting point for a prosecutor’s evaluation of whether a company has a well-designed compliance program is to understand the company’s business from a commercial perspective, how the company has **identified, assessed, and defined its risk profile**, and the degree to which the program devotes appropriate scrutiny and resources to the spectrum of risks”.



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Organizational Culpability

Criminal liability can attach to an organization whenever an employee of the organization commits an act within the apparent scope of his or her employment, **even if the employee acted directly contrary to company policy and instructions.**

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Organizational Culpability

The four factors that increase the ultimate punishment of an organization are:

- 1 The involvement in or tolerance of criminal activity
- 2 The prior history of the organization in terms of prior violations, including civil and administrative dispositions
- 3 The violation of an earlier court order during the occurrence of the offense which is being prosecuted
- 4 The obstruction of justice

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Organizational Culpability

The two factors that mitigate the punishment of an organization are:

1

The existence of an effective compliance and ethics program

2

The combination of the organization's efforts in self-reporting, cooperating with the authorities, or accepting responsibility

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The Seven Elements (of an effective compliance and ethics program)

1. Compliance Officer/Committee Oversight
 2. Standards of Conduct/Policies and Procedures
 3. Education and Training
 4. Monitoring and Auditing
 5. Reporting and Investigating
 6. Enforcement and Program Improvement
 7. Response and Prevention
- * Risk based assessment (2019)

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Section 8B2.1 Interpretation

1. High-level executive to oversee the program
2. Support of a knowledgeable board
3. No barriers to access – direct reporting very important, perception/reality that reporting through a position (regardless of who or what level) loses independence
4. Have resources to get the job done
5. Be credible, demonstrate integrity and no issues in background
6. Have a seat at the table

(Society of Corporate Compliance and Ethics)

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Standards of Conduct/Policies and Procedures

1. Policy Design – Process for design and implementation
2. Comprehensiveness – Have all risks been covered?
3. Accessibility – Are the policies effectively communicated?
4. Responsibility for Operational Accountability
5. Gatekeepers – Are controllers aware of responsibilities?

(U.S. Department of Justice Criminal Division Evaluation of Corporate Compliance Programs - Updated April 2019)

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Education and Training

Tailor your training to the specific needs of your audience

“The organization shall take reasonable steps to communicate periodically...its standards and procedures, and other aspects of the compliance and ethics program, to all personnel by conducting effective training programs...appropriate to such individuals’ respective roles and responsibilities”

(United States Sentencing Guidelines Chapter 8)

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Form/Content/Effectiveness of Training

- *Has the training been offered in the form and language appropriate for the audience?*
- *Is the training provided online or in-person (or both), and what is the company's rationale for its choice?*
- *Has the training addressed lessons learned from prior compliance incidents?*
- *How has the company measured the effectiveness of the training?*
- *Have employees been tested on what they have learned?*
- *How has the company addressed employees who fail all or a portion of the testing?*

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Monitoring and Auditing

Audit Requirements

1. Documented evidence of actions taken when monitoring controls identify failure
2. Instances of non-compliance documented and dealt with appropriately
3. Instances on non-compliance reported to the Compliance Officer
4. Documented training related to risk has been provided to all employees
5. Documented training provided in each case of failure of operating controls or non-compliance
6. Periodic reporting to the board

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Reporting and Investigations

Effectiveness of the Reporting System

- *Does the company have an anonymous reporting mechanism, and, if not, why not?*
- *How is the reporting mechanism publicized to the company's employees?*
- *Has it been used?*
- *How has the company assessed the seriousness of the allegations it received?*
- *Has the compliance function had full access to reporting and investigative information?*

(U.S. Department of Justice Criminal Division Evaluation of Corporate Compliance Programs - Updated April 2019)

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Reporting and Investigations

Properly Scoped Investigations by Qualified Personnel

- *How does the company determine which complaints or red flags merit further investigation?*
- *How does the company ensure that investigations are properly scoped?*
- *What steps does the company take to ensure investigations are independent, objective, appropriately conducted, and properly documented?*
- *How does the company determine who should conduct an investigation, and who makes that determination?*

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Reporting and Investigations

Investigation Response

- *Does the company apply timing metrics to ensure responsiveness?*
- *Does the company have a process for monitoring the outcome of investigations and ensuring accountability for the response to any findings or recommendations?*

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Enforcement and Program Improvement

Sec. 8B_{2.1} Effective Compliance and Ethics Program:

“the organization’s compliance and ethics program shall be promoted and enforced consistently throughout the organization including appropriate disciplinary measures”

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Enforcement and Program Improvement

2010 Amendments

Sec. 8B_{2.1} *“After criminal conduct has been detected, the organization shall take reasonable steps to respond appropriately to the criminal conduct to prevent further similar conduct, including making any necessary modifications to the organizations compliance and ethics program”*

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Response and Prevention

The organization shall take reasonable steps...

- ✓ To ensure that the organization's compliance and ethics program is followed, including monitoring and auditing to detect criminal conduct;
- ✓ To evaluate periodically the effectiveness of the organization's compliance and ethics program; and
- ✓ To have and publicize a system, which may include mechanisms that allow for anonymity or confidentiality, whereby the organization's employees and agents may report or seek guidance regarding potential or actual criminal conduct without fear of retaliation.

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Risk-Tailored Resource Allocation

- *Does the company devote a disproportionate amount of time to policing low-risk areas instead of high-risk areas, such as questionable payments to third-party consultants, suspicious trading activity, or excessive discounts to resellers and distributors?*
- *Does the company give greater scrutiny, as warranted, to high-risk transactions (for instance, a large-dollar contract with a government agency in a high-risk country) than more modest and routine hospitality and entertainment?*

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Risk-Tailored Updates and Revisions

- *Is the risk assessment current and subject to periodic review?*
- *Have there been any updates to policies and procedures in light of lessons learned?*
- *Do these updates account for risks discovered through misconduct or other problems with the compliance program?*

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Thank You!

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