

## New Beginnings: Starting your Compliance Program and What Needs to be Included

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This is just the beginning!



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## Ethics & Compliance Programs: How Comprehensive?

- Employment/Labor Law
- Anti-Trust/Competition
- Anti-Corruption/Bribery – Fed prosecutors are looking outside the US
- Intellectual Property Protection/Confidential Information
- Information Technology
- Laws which pertain specifically to the organization/industry
- Federal Sentencing Guidelines
- International considerations - GLOBAL
- Everywhere you do business...



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## Benefits of an Effective Ethics & Compliance Program

- Encourages ethical culture
- Enables the identification and prevention of non-compliant activity
- Enables self reporting
- Facilitates timely and appropriate corrective action and remediation
- Provides an infrastructure that encourages employees to report potential problems and seek help before acting
- Allows for timely investigations

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**General Considerations: Gain Support/Commitment\***

- Top levels of the organization – *Values-based approach*
  - Board of Directors
  - Senior Leadership
- Management/Supervisors – middle management is key – “Tone at the Middle”
- Employees and staff at all levels

*\*Gain support and buy-in through direct engagement, education, partnership, collaboration, leadership, empowerment, and a solid values-based business case*

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**General Considerations: Program Development**

- Compliance Program Structure and Plan
  - Appoint Compliance Officer
  - Resources (people, budget, job descriptions, etc.)
  - Infrastructure needs, i.e., education/communications platform & mechanisms, marketing resources, reporting mechanism, etc.
- Establish capabilities and protocols for issue management, tracking & trending, gathering program effectiveness metrics, etc.
- Partner with other key functional areas; leverage existing resources

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**Federal Sentencing Guidelines (FSG), Chapter 8**

- Effective November 1, 1991
- Revised November 2004 and 2010
- Control sentencing of organizations for most federal criminal violations
- Sentencing credit for “effective programs to prevent and detect violations of law”

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**Nov 2004: FSG Revisions**

- "culture" of compliance
- defining compliance standards & procedures
- spelling out compliance obligations
- adequate resources
- clarifying employee screening practices
- Training an essential element
- Mandating means for anonymous reporting
- add, "specifically encourage prevention and deterrence of violations of the law as part of compliance programs"
- "ongoing risk assessments"
- Compliance program effectiveness assessments

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**Nov. 2010: FSG Revisions**

- 1<sup>st</sup>: the organization must respond appropriately to the criminal conduct, including restitution to the victims, self-reporting and cooperation with authorities.
- 2<sup>nd</sup>: the organization must assess its program and modify it to make the program more effective. They seem to encourage the use of an independent monitor to ensure implementation of the changes.

You can get credit for having an effective program, provided you meet the new criteria.

- the head of the compliance program must report directly to the governing authority or appropriate subgroup,
- the compliance program must discover the problem before discovery outside the organization was reasonably likely,
- the organization must promptly report the problem to the government, and
- no person with operational responsibility in the compliance program participated in, condoned or was willfully ignorant of the offense.

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**The Yates Memo**

- September 2015 (Sally Yates, Deputy Attorney General)
- Seeking accountability from the individuals who perpetrated the wrongdoing
- Deters future illegal activity
- Incentivizes changes in corporate behavior
- Proper parties are held responsible for their behavior
- Promotes the public's confidence in our justice system

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### Essential Elements of Ethics & Compliance Programs

1. Standards of Conduct / Policies & Procedures
2. Compliance Oversight
3. Education and Training
4. Monitoring and Auditing
5. Reporting and Investigation
6. Enforcement, Incentives and Discipline
7. Response and Prevention
  - Risk Assessment and Ongoing Improvement
  - Effectiveness Assessment

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### Standards of Conduct (Code of Conduct)

- Keep it real – Values-based and avoid legalese
- Tailor to organization's culture, ethical attitude, business, and corporate identity
  - Obtain input - focus groups, senior execs., etc.
- Resource for employees on seeking help and reporting concerns
- Scenarios and FAQs
- Endorsement by CEO
- Keep it simple
- Be sure translations are credible



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### Standards of Conduct (Policies and Procedures)

- Write policies that are easy to understand
- Accountability is critical
- Those affected by the policy should be involved in their creation
- Integrate with and complement other departmental policies and procedures
- Ensure that all policies are communicated



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### Standards of Conduct/Policies and Procedures

- **Challenges**
  - Tendency to write the document that protects the organization but is not easily understood by employees
  - Accountability
  - No one wants to own the "Process"
  - Ongoing monitoring of policies to assure current practice
  - Dissemination to employees
- **Opportunities**
  - Enhance culture of accountability
  - Enables consistency
  - If there is a good process with help to eliminate duplication

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### Compliance Oversight

- **Governing Authority:** They are ultimately responsible for Compliance Program oversight
  - Participates in the appointment of the Compliance Officer
  - Assures routine reports are made to the Board by the Compliance Officer
  - Identifies processes allows for Compliance Officer independence
- **Ethics & Compliance Officer – Overall day-to-day responsibility**
  - Strong leader – Independent, empowered, effective
  - Shall have adequate resources and authority

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### Compliance Oversight

- **Challenges**
  - Compliance Professional should be a high level individual – management doesn't recognize the importance of the role
  - Reporting Structures which are influenced by culture
  - Board's may not understand their accountability related to compliance oversight
  - Sanction process may not be routinely done other than new hires
  - Compliance Officer attendance at board meetings
- **Opportunities**
  - Increase awareness of the Compliance Program
  - Enforcement has supported compliance professionals reporting to the board and positioned at a high level in the organization
  - Buy-in from the Board for the Compliance Program affects culture

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## Training and Education

- Internal vs. External resources
- Mandatory vs. Voluntary – Audience & Risk Considerations
- General vs. Specific – Content Considerations
- Training Methods
  - Blended & Interactive approach is most effective
- Attestations
- Reinforce the message – “Use it or Lose It”



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## Training and Education

- **Challenges**
  - Budget
  - Refreshment of education to stay current
  - Specific risk areas included in general education
  - HR providing compliance education
  - Obtaining buy-in from management
- **Opportunities**
  - Identify creative ways to disseminate education
  - Include real-time scenarios in education
  - Engage management to assist in education opportunities
  - Partnering with other departments (i.e.. HR, legal, internal audit)

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## Monitoring and Auditing

- Essential for effectiveness
    - Prevention and detection mechanism
    - Monitoring - Real time reviews
    - Audits - Independent/objective
- Monitoring & Auditing Planning
- Leverage what is already available
  - Scalable to risks and resources
  - Range of tools, e.g., self assessments, internal audits, external audits, exit interviews, employee engagement surveys, etc.



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## Monitoring and Auditing

- Challenges
  - Resources
  - Skill level related to auditing, ie: sampling, report writing, etc.
  - Subject matter expertise for auditing
  - Cultural understanding of independence
  - Management's accountability to do ongoing monitoring
  - Management's accountability to mitigate the risk (findings from the audit)
- Opportunities
  - Leverage other resources
  - Increase accountability for risk management
  - Increase accountability for ongoing risk mitigation

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## Reporting and Investigation

- Reporting System
  - Essential program resource for reporting wrong-doing and/or seeking help and guidance
  - Anonymous & confidential to extent allowed by law
  - Need strong, publicized and enforced non-retaliation policy
  - Continually market and publicize reporting mechanism
- Challenges:
  - Global companies understanding country laws regarding hotlines and reporting systems
  - Fear of retaliation and perceived inaction are key reasons for non-use
- **Opportunity:** Hotline metrics can be used to identify cultural opportunities.

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## Reporting and Investigation

- Conducting Timely Investigations
  - Trained investigators
  - Work with management to determine the root cause
  - Management should develop Corrective Actions Plans (CAPs)
  - Compliance will monitor CAPs to ensure they are working
- Challenge: Report writing and management accountability
- Opportunity: Leverage risk partners for investigative team (e.g., legal, HR)



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### Enforcement, Incentives and Discipline

- Incentives
  - Incentives should be aligned with compliance performance metrics
- Enforcement and Discipline
  - Support from Senior Management; Board
  - All members of organization understand expectations
- **Challenge:** Fairness and consistency
- **Opportunity:** Align performance reviews with incentives



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### Response and Prevention

- Outside support & resources: Attorney-client privilege?
- Preventative measures
  - Resolution of Issues – Root cause analysis/checklist
  - Education and Awareness-increase knowledge
  - Policies and Procedures-identify clearly expectations
- **Challenge:** Who is the decision maker after report is completed?
- **Opportunity:** The earlier the issue is identified the easier it is to fix. Prevents likelihood of reoccurrence.



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### Risk Assessment

- Why conduct a risk assessment? Timing (annual, ongoing)?
- Risk Identification considerations
  - Legal and regulatory requirements
  - Current challenges, past findings, other indicators
  - Obstacles to strategic objectives
  - Program Benchmarking
- Risk Prioritization
  - Impact and Likelihood
- Risk Management Plans & Clear Ownership

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### Ongoing Improvement

Evaluation of Compliance Program Effectiveness:

- Considerations & Approaches:
  - Program metrics to determine cultural tone, ie: issues identified, questions, etc.
  - Surveys, Focus Groups, Testing
  - Self Assessments
  - Exit Interviews
  - Internal Audit findings-trends, etc.
  - Regulatory references (ie: DOJ)

Is program working as designed and implemented? Impact?

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### “Characteristics” of an Effective Program

- The infrastructure is working
  - Sufficient resources
- Program authority or “clout”
- Program independence
- Sufficient program “reach” and embedding in the company’s operations
- Meaningful management knowledge of and involvement in the program
- Program’s focus on corporate culture and ethics, not just compliance

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### Industry Practice and Benchmarking

“An organization’s failure to incorporate and follow applicable industry practice...weighs against a finding of an effective compliance and ethics program.” USSG Commentary

Keep up with what is happening in the field...

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QUESTIONS???

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