

# SCCE COMPLIANCE & ETHICS INSTITUTE

## Compliance 101

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### Why Develop an Ethics & Compliance Program?

- Promotes a culture of ethical behavior and commitment to compliance with the law
- Prevents and detects wrong-doing
- Communicates organizational expectations and commitment
- Provides "safe" mechanisms for reporting and seeking help
- Raises awareness
- Enables compliance with governing standards, laws and guidelines
- Makes good business sense/provides a competitive edge – benefits of having an effective ethics and compliance program
- Positive impact to corporate reputation/culture; public image
- Serves as a risk management tool

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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
- Conflicts of Interest
- Laws which pertain specifically to the organization
- Federal Sentencing Guideline Standards
- Ethics and Compliance Programs – encourage the "right" culture
- Other Federal and/or State laws
- International considerations - GLOBAL
- Everywhere you do business...

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**Benefits of an Effective Ethics & Compliance Program**

- Encourages and facilitates ethical conduct across the organization
- Enables the identification and prevention of criminal and unethical conduct
- Enable self reporting
  - For antitrust, necessary for amnesty
  - For other offenses, key to leniency
- Creates a centralized source of information and guidance for complying with laws, guidelines and regulations
- Provides an infrastructure that encourages employees to report potential problems and seek help before acting

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**Benefits of an Effective Ethics & Compliance Program**

- Integrates processes that ensure the prompt, thorough investigation of alleged misconduct
- Facilitates timely and appropriate corrective action and remediation
- Reduces liability and exposure to civil damages and penalties, criminal sanctions, and administrative remedies, such as program exclusions
  - Criminal - leniency for a "pre-existing" program
    - Complete declination or reduced penalty
  - Some (but less) credit for after-the-fact programs
- Fosters a strong ethical culture -- Attracts talent and improves employee retention

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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"
- Other functional areas – HR, Security, IT, Internal Audit, Corp Comm, etc.
- 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: Support Needs...**

- Development/Beginning Stages
  - Program and Risk Assessment/Program Plan
  - Resources (people, budget, etc.)
  - Infrastructure needs, i.e., education/communications platform & mechanisms, marketing resources, reporting mechanism, printing services, etc.
  - Establish capabilities and protocols for issue management, tracking & trending, gathering program effectiveness metrics, etc.
  - Partner with other key functional areas; leverage existing resources
- Ongoing operational needs and considerations

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**General Considerations: Governance & Staffing**

- Establish organizational governance & infrastructure
  - Reporting structure defined ("Tone at the Top")
  - Charters, roles, responsibilities, etc.
- Ethics & Compliance Officer Appointment
  - High-level individual w/overall responsibility
- Develop job functions/job descriptions for staff, i.e., Education/training, auditors, hotline and issue management, policy and procedure development, etc.
- Counsel (internal and external)

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**United States Sentencing Guidelines**

- 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

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**Recommendations, cont.**

- 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” if credit expected

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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.

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**Nov. 2010: FSG Revisions**

**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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**Essential Elements of Ethics & Compliance Programs**

- Standards and Procedures
- Oversight & Accountability
- Due Care in Delegating Authority
- Communication, Training and Awareness
- Monitoring, Auditing and Reporting
- Enforcement, Incentives and Discipline
- Response and Prevention
- Risk Assessment and Ongoing Improvement



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**Standards & Procedures**

➤ Code of Conduct

- Keep it real – Values-based and avoid legalese
- Tailor to organization's culture, ethical attitude, business, and corporate identity
  - Get lots of input - focus groups, senior execs., etc.
- Guidance on seeking help and reporting concerns
- High-level concepts and key policies
- Scenarios and FAQs
- Endorsement by CEO
- Clearly stated expectations
- Primary language – watch translations



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## Standards & Procedures

### ➤ Standards and Procedures

- Controls – Facilitate compliance and prevent misconduct
- Structural
- Substantive
- Integrate with and complement other departmental policies and procedures
- Avoid repetition/duplication
- Values-based – Speaks to Audience
- Publication – consider how best to communicate standards and procedures to employees and others



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## Oversight and Accountability

- Governing Authority – Knowledgeable of program w/reasonable oversight (*Board of Directors*)
- High-level personnel – Ensures effective program is in place
- Ethics & Compliance Officer – Overall responsibility
  - Strong leader – Independent, empowered, effective
- Designated individual(s) responsible for day-to-day operations
  - Access to Board with periodic reporting responsibilities
  - Shall have adequate resources and authority
- Other: Compliance Committees, Regional liaisons, Program Staff, etc.

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## Due Care in Delegation of Authority

- Don't give responsibility or authority to those you should have known are criminals
- Do hiring and promotion systems screen out those likely to break the law or who have a history of unethical behavior?
  - Use care when placing individuals in positions of substantial authority, i.e., hiring, promotions – *Substantial Authority Personnel*
- Could you have a Board Member, executive or other manager who had served time for armed robbery without knowing it (e.g., Smith and Wesson)?
  - CEO resigned, served time – “Nobody asked”

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## Communications, Training and Awareness

- Communication and Training Effectiveness – *Continual review*
- Internal vs. External
- Mandatory vs. Voluntary – Audience & Risk Considerations
- General vs. Specific – Content Considerations
- Training Methods
  - Blended & Interactive approach is most effective
- Attestations
- Other Communications Media
  - Publish disciplinary cases and “good news” stories as learning tools



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## Monitoring and Auditing

- Essential for effectiveness
  - Serves to prevent and detect criminal conduct and wrongdoing
  - Monitoring - Real time reviews
  - Audits - Independent/objective – use of subject-matter experts
- Monitoring & Auditing Planning
  - Leverage what is already available
  - Scalable to risks and resources
  - Range of tools, e.g., deep dives, self assessments, internal audits, external audits, exit interviews, employee engagement surveys, etc.
- Outputs used to create and support “effectiveness” metrics and improve program

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## Reporting

- Hotline/Hotline
  - Essential program resource for reporting wrong-doing and/or seeking help and guidance
  - Consider differing country laws, etc., if global organization
  - Anonymous & confidential to extent allowed by law
  - Need strong, publicized and enforced non-retaliation policy
  - Fear of retaliation and perceived inaction are key reasons for non-use
  - Continually market and publicize reporting mechanism
  - Internal vs. external systems?
- Address matters in a timely and consistent way
- Use hotline metrics to improve program



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### Enforcement, Incentives and Discipline

- Failure to take reasonable steps to prevent or detect criminal conduct heightens organizational liability and negatively impacts effectiveness determinations
- Incentives
  - Incentives aligned
  - Performance reviews & compensation
- Consistency in enforcement
  - Support from Sr. Mgmt; Board
  - Understanding by all members of organization
  - Fairness and consistency is key



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### Response and Prevention

- Timely response
- Triaging and handling investigations
  - Investigations should be professional – train investigators
  - Reports – to whom, how, when?
  - Decision-making on outcomes of concerns
- Action is comprehensive related to the potential/real concern
  - Is it really a problem?
  - How serious is it?
  - Are there enough facts to investigate?



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### Response and Prevention

- Outside support & resources considered (outside counsel, etc.)
  - Attorney-client privilege?
- Preventative measures
  - Resolution of Issues – Root cause analysis/checklist
  - Education and Awareness
  - Policies and Procedures
- Remediation efforts are timely and adequately address the program gaps, identified risks, etc.
  - Prevents likelihood of reoccurrence



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## Risk Assessment

- Why conduct a risk assessment? Timing?
- Risk Identification considerations – Internal/External Inputs
  - Industry and organization specific risks
  - Legal and regulatory requirements
  - Current challenges, past findings, incidents, etc.
  - Management Judgment – What keeps them up at night
  - Program Benchmarking
- Risk Assessment & Prioritization Phase
  - Impact and Likelihood
- Risk Management Plans & Clear Ownership
- Test, Audit and Monitoring Activities



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## Ongoing Improvement

Evaluating Effectiveness:

- Considerations & Approaches:
  - Program metrics (hotline calls, incidents, etc.)
  - Surveys
  - Focus Groups
  - Testing
  - Self Assessments
  - Exit Interviews
  - Periodic risk assessment, Internal Audit reports, etc.

Is program working as designed and implemented? Impact?

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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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**Enforcement Efforts Continue...**

- Enforcement environment – Heightened scrutiny
- Enforcement activity – Recoveries are paying for the investigations
- Enforcement weapons – Forensic data mining, tracking/trending, etc.
- International – Global enforcement!

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**“Characteristics” of an Effective Program**

- 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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**Sources**

- SCCE [www.corporatecompliance.org](http://www.corporatecompliance.org)
- Murphy, *501 Ideas for Your Compliance and Ethics Program*, (SCCE: 2008)
- SCCE Complete Compliance & Ethics Manual

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QUESTIONS???



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