

## A CORPORATE COMPLIANCE PLAN – Why?

Organizations, like individuals, can be found guilty of criminal conduct. Organizations cannot be imprisoned, BUT they can be:

- fined
- sentenced to probation
- ordered to make restitution
- ordered to issue public notices of conviction
- ordered to make apologies to their victim(s)
- exposed to forfeiture statutes

Chapter 8 of the U. S. Federal Sentencing Guidelines governs punishment for organizational crimes. Sentencing guidelines that apply to all organizations became effective November 1, 1991. These guidelines apply to privately held as well as public organizations, including corporations, partnerships, labor unions, pension funds, trusts, **non-profit entities**, and governmental units. The guidelines are designed to further two key purposes of sentencing - “Just” punishment, and deterrence

Under the “Just” punishment model, the punishment corresponds to the degree of blameworthiness of the offender. Under the deterrence model, incentives are offered for organizations to detect and prevent criminal conduct within their ranks. 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. Therefore, an organization, despite its best efforts, can still be held criminally liable for any of its employees’ illegal actions.

The Federal Sentencing Commission has incorporated into its sentencing structure guidelines an opportunity for the mitigation of punishment to which organizations are subjected. The sentencing court will generally look to six factors in determining culpability. Four of these factors increase the ultimate punishment, while two of the factors mitigate the consequences. The existence of an effective compliance and ethics program and the combination of the organization’s efforts in self-reporting, cooperating with the authorities, or accepting responsibility is a mitigating occurrence. The potential fine for a criminal conviction can be significantly reduced if an organization can demonstrate that it had put in place **effective compliance and/or ethics programs AND** that the criminal violation represented an aberration within an otherwise law-abiding organization. These mitigating factors are also contingent upon prompt reporting to the authorities and the non-involvement of high level personnel in the actual offense.

An effective compliance and ethics program is a structural foundation that provides a mechanism for policing of the organization’s conduct to reduce and eliminate criminal conduct, **or alternatively**, encourage ethical conduct and full compliance with all applicable laws and regulations. An effective compliance and ethics program is a structural foundation that should be unique. *Flexibility and independence in designing a program is essential.*

The following are seven components of an effective plan:

**Item 1** - The organization must exercise “due diligence” in seeking to prevent and detect criminal conduct by its employees and other agents. “Due diligence” requires a written Code of Conduct that sets forth standards and procedures to prevent and detect criminal conduct. The code should encourage commitment to understand and to operate in accordance with standards of good business conduct, company policies, and applicable federal, state and local laws, and must address *and anticipate* potential fraud and abuse activities within the organization.

**Item 2** – Assign responsibility at all levels and provide adequate resources and authority for the program; appoint a corporate compliance officer (CCO), and/or committee and make them responsible to:

- Implement and continue the momentum of the program
- Continuously evaluate and modify the program
- Take reports of problems or violations AND have authority to independently investigate and correct problems and violations
- Oversee a periodic compliance audit
- Monitor independent contractor and agent relationships
- Train employees in compliance matters
- Report to top management or the governing body

**Item 3** – Maintain the integrity of your workforce. Conduct background checks on key people including the CCO, and use due diligence in delegating “substantial” authority.

**Item 4** – Train at all levels.

**Item 5** – Develop effective lines of communication that are neutral, independent, confidential, and non-retaliatory. Communication avenues should be a means to both seek guidance and to report violations.

**Item 6** – Audit, monitor, and evaluate program effectiveness by conducting self-analysis, testing of adherence to the plan, and performing forensic accounting examinations.

**Item 7** – Develop incentives and deterrents to promote compliance. Establish a disciplinary system to include types of offenses and grounds for disciplinary action. Publish disciplinary decisions, if appropriate. Take reasonable corrective actions to respond to and prevent further similar offenses upon detection of a violation.

Compliance is costly, BUT is their benefits? YES! Potential benefits include increased accuracy and reliability of financial information, the elimination of fraud, and the elimination of criminal activity on the part of management, employees, or agents. An effective corporate compliance program can dramatically reduce liability exposure for the organization, management (compensated and volunteer) and employed personnel. Most importantly, it can reduce the risk of adverse publicity and a negative effect on accomplishment of an organization’s mission.

*I hope the above information enhances the management of your organization.*

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