




**SCCE 6th ANNUAL EUROPEAN
COMPLIANCE & ETHICS INSTITUTE**

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*Corporate Responsibility & Liability:
A Global Perspective*


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**United States Sentencing Commission-
Federal Sentencing Guidelines**

- Effective November 1, 1991
- 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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**Seven Essential Elements of a
Compliance Plan (paraphrased)***

- Standards and Procedures
- Oversight
- Education and Training
- Monitoring and Auditing
- Reporting
- Enforcement and Discipline
- Response and Prevention

* Federal Sentencing Guidelines, Chapter 8, 1991

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Amendments to FSG's, 2004

- ❑ Report published **October 7, 2003**
- ❑ <http://www.ussc.gov/corp/advgrprpt/advgrprpt.htm>
- ❑ Effective **November 1, 2004**
- ❑ Key Recommendations:
 - ❖ "culture" of ethics and compliance
 - ❖ Defining ethics and compliance standards & procedures
 - ❖ Spelling out compliance obligations
 - ❖ Adequate resources
 - ❖ Clarifying employee screening practices
 - ❖ Training as an essential element
 - ❖ Means for anonymous reporting
 - ❖ Ongoing risk assessments.

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Amendments to FSG's, 2010

Expands an organization's eligibility for a reduced culpability if it has an effective program


- ❑ Effective in Detecting Criminal Conduct
 - ❖ The ethics and compliance program must detect the offense before its discovery outside the organization or before such discovery was reasonably likely
 - ❖ The organization must promptly report the offense to the proper governmental authorities
 - ❖ No person with operational responsibility in the program participated in, condoned, or was willfully ignorant of the offense.

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2010 Changes (Cont'd.)

- ❑ Enhanced Autonomy for Compliance Personnel
 - ❖ "direct reporting" channel between compliance personnel and the organization's governing authority
 - ❖ "express authority" for the "individual or individual with operational responsibility for the compliance and ethics program" to communicate "personally" with the governing authority
 - promptly on any matter involving criminal conduct or potential criminal conduct
 - no less than annually on the implementation and effectiveness of the compliance and ethics program
- ❑ If these requirements are met, corporations may receive credit for their ethics and compliance program.


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Individual Accountability for Corporate Wrongdoing – Yates Memo

- ❑ Written by: Sally Quillian Yates – Deputy Attorney General – 9/5/15
- ❑ "One of the most effective ways to combat corporate misconduct is by **seeking accountability from the individuals who perpetrated the wrongdoing.**"
- ❑ "Such accountability is important for several reasons:
 - ❖ it deters future illegal activity,
 - ❖ it incentivizes changes in corporate behavior,
 - ❖ it ensures that the proper parties are held responsible for their actions, and
 - ❖ it promotes the public's confidence in our justice system."


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Oversight and Accountability

- ❑ Governing Authority – Knowledgeable about compliance program with reasonable oversight (*Board of Directors*)
- ❑ Ethics & Compliance Officer – high level individual
 - ❖ Reporting structure clearly defined
 - "direct to the top", no buffers
 - ❖ Strong leader – independent, empowered, effective
 - ❖ Shall have adequate resources and authority
 - ❖ Access to Board with periodic reporting responsibilities
- ❑ Compliance Committee, Regional liaisons, Program Staff, etc.


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The Principles of Federal Prosecution of Business Organizations in the United States Attorneys Manual ("Filip Factors")

- ❑ Specific factors for Department of Justice prosecutors to consider in conducting an investigation of an organization;
- ❑ Determining whether to bring charges against the organization;
- ❑ Negotiating resolution of criminal and civil matters with organization;
- ❑ The factors include "the existence and effectiveness of the organization's pre-existing compliance program and efforts to implement an effective compliance program;
- ❑ Deferred Prosecution and/or Corporate Integrity Agreements.


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Department of Justice Evaluation of Corporate Compliance Programs

- Analysis and Remediation of Underlying Misconduct
- Senior and Middle Management
- Autonomy and Resources
- Policies and Procedures
- Risk Assessment
- Training and Communications
- Confidential Reporting and Investigation
- Incentives and Disciplinary Measures
- Continuous Improvement, Periodic Testing and Review
- Third Party Management
- Mergers and Acquisitions (M&A)

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Department of Justice Evaluation of Corporate Compliance Programs (Cont'd.)

- United States Sentencing Guidelines ("USSG")
- United States Attorney's Manual ("USAM")
- A Resource Guide to the U.S. Foreign Corrupt Practices Act ("FCPA Guide")
- Good Practice Guidance on Internal Controls, Ethics and Compliance by the Organization for Economic Cooperation and Development ("OECD") Council
- Anti-Corruption Ethics and Compliance Handbook for Business (OECD Handbook) by OECD, United Nations Office on Drugs and Crime and the World Bank.

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Reference Material on Link to SCCE European Compliance and Ethics Institute 2018

- Department of Justice Criminal Division Evaluation of Corporate Compliance Programs
- White Paper – The Seven Elements of an Effective Compliance and Ethics Program
- Practical Guidance for Health Care Governing Boards on Compliance Oversight
- United States Securities and Exchange Commission Statement on Cooperation and Agency Enforcement Decisions
- Corporate Integrity Agreement between the Office of Inspector General of Health and Human Services and South Miami Hospital
- Non-Prosecution Agreement between the General Cable Corporation and United States Department of Justice
- Non-Prosecution Agreement between Tenet HealthSystem Medical, Inc. and United States Department of Justice
- Compliance and Governance for Health Care Organizations by Gabriel L. Imperato, Esq. and Anne N. Branam, Esq.
- Department of Justice Increases Focus on Organizational Compliance by Gabriel Imperato, Esq.

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