

## Sticks, carrots and resources for ethics and compliance

**1** 991 was a very big year in the history of corporate compliance and ethics programs in the United States. In that year, the U.S. Sentencing Commission published Chapter 8 of the federal sentencing guidelines, titled "Sentencing of Organizations" ([www.uscc.gov/orgguide.htm](http://www.uscc.gov/orgguide.htm)). Those guidelines, which were amended in 2004, have since become the blueprint used by virtually every corporation that has built a compliance and ethics program.

This may seem a bit strange at first. Why would corporations base their compliance and ethics programs on a set of guidelines that come into play only when a company has been convicted of a crime and is about to be sentenced? The answer can be found by taking into account some very large "sticks" and "carrots."

### The sticks

The government has formidable "sticks" when it comes to prosecuting organizations. In the United States, as in most modern democracies, corporations can be held criminally liable for the acts of employees when the acts are committed within the scope of their employment. This is true even in cases in which the employee violates company policy and management instructions.

So, for example, even businesses with honest management that exhort their employees to follow the rules can, and routinely are, convicted and punished for the acts of disobedient employees. In certain circumstances, senior managers can be held criminally liable for the acts of other employees, even if they were unaware of the underlying crime. As a consequence, these "sticks" have long held the attention of knowledgeable business professionals.

### The carrots

The guidelines were designed in part to give organizations both the opportunity and the incentive to reduce their exposure to criminal liability by implementing "effective compliance and ethics programs" that have the following seven elements:

- Adequate compliance standards and procedures.
- Effective compliance oversight.



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- Careful delegation and due care in hiring and screening employees.

- Effective training and education for roles and responsibilities.

- Monitoring, auditing and hot lines.

- Program promotion and enforcement.

- Corrective actions in response to violations.

The guidelines provide significantly more detail regarding the government's expectations than I can share here, but the important thing for you to know is that there are three very big "carrots" for building a compliance and ethics program that has the seven elements:

- Such a program will reduce your company's risk of getting into trouble in the first place by making it less likely that employees will engage in criminal activities on the job.

- Federal prosecutors have stated that they will take the presence of such a program into account in deciding whether to prosecute a corporation for the crimes of its employees. The government always has the option of prosecuting only the employee and leaving the company alone.

- If worse comes to worst and your company is convicted of a crime, you can get up to a 95 percent reduction in the fine levied against your company, provided you have a satisfactory compliance and ethics program and meet a number of other requirements such as cooperating with the investigation.

### Ethics and compliance resources

Unlike the ethics and compliance pioneers who began building programs in the 1990s, those starting programs today can take advantage of nearly 20 years of experience in implementing the guidelines,

tapping into several valuable resources. One of these resources is "The Ethics and Compliance Handbook: A Practical Guide from Leading Organizations," which was just published last year by the Ethics and Compliance Officer Association.

The handbook is chock-full of practical advice about how to perform a compliance and ethics risk assessment, create an ethics and compliance office, establish effective board and senior management oversight, write a code of conduct, manage internal investigations, do effective employee screening, evaluate program effectiveness and address many other essential topics. In addition, each chapter in the book begins with a recitation of the applicable guideline provision and walks you through how to satisfy guideline requirements. You can purchase a copy of the handbook at [www.theecoa.org](http://www.theecoa.org).

But, of course, the handbook is not the only resource available for you. Resources are available across the Internet, and one of the best is not far from home: The Rochester Area Business Ethics Foundation maintains a Web site ([www.rochester-businessethics.com](http://www.rochester-businessethics.com)) that contains a wealth of information, including a page of links to other "Ethics Resources."

In addition, even if you are not interested in applying for the RABEF's annual ethics award, many applicants have found the application itself to be a good checklist of things to consider when developing a program.

If you would like to do something to help your company avoid the "sticks" and pursue the "carrots," you might save a lot of time and money by using some of the resources mentioned above. You might also consider joining the ECOA, as I did seven years ago, to take full advantage of the price break you will get on the handbook, monthly newsletters, access to a comprehensive library of presentations, white papers and webcasts on virtually every compliance and ethics topic. Members also get the opportunity to attend conferences in which they can meet and learn from the most talented ethics and compliance professionals in the world.

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