What is on the exam?

1. Standards, Policies and Procedures
2. Compliance and Ethics Program Administration
3. Communication, Education, and Training
4. Monitoring, Auditing, and Internal Reporting Systems
5. Investigations and Response, Discipline and Incentives
6. Risk Assessment
This Session’s Focus

Communication, Education, and Training
Monitoring, Auditing, and Internal Reporting Systems

“Good morning and happy Saturday to everyone,

I am sharing my good news that I passed the CHC this morning. I took the exam at a PSI testing site and finished in just enough time to do a quick review of my answers. Ditto to everything Sonu said about study preparation. I took Sonu’s advice and re-read the Compliance 101 book last night and I found it to be helpful.

I will emphasize that the majority of the questions were scenarios that required you to select the “best” answer or your “first step.” There were multiple questions related to finding a potential problem and having you analyze how to handle the problem. For most of these issues, I selected the step that required you to step back and analyze a problem, and learn the facts before taking more extreme actions. Of course, there are times when an immediate action is warranted, for example, when you discover that an excluded provider has been billing for several months.

It is important to understand the CO’s role delineation and how you interact with HR and legal. There were many questions that made you select who you would involve: legal counsel versus the board, management, or HR. Understand the role of the legal counsel. At least one question involved the CEO obstructing the CO’s investigation of a serious matter. The possible answers included contacting legal counsel, contacting the board chair or resigning. Analyzing common potential scenarios will be very helpful. As you prepare, read every scenario you can find (case examples) and the rationale for the best answer.

Frank’s compare and contrast advice is sound. His advice about looking for key words in the question is also important. The study group has been incredibly helpful and I will continue to participate as often as possible.”

-Rebecca Summey-Lowman
HCCAnet/SCCEnet
Question 1

A compliance and ethics professional investigates a report of sexual harassment. The incident does not constitute sexual harassment, but reveals the employee’s misunderstanding of the harassment policy. Which of the following should be the FIRST step in a corrective action plan?

A. Consult outside counsel
B. Disclose the incident to the EEOC
C. Provide education and training on the policy
D. Survey employee’s understanding of the policy

At a minimum, the employee who misunderstood the policy needs to receive additional education and training on the policy FIRST to avoid a repeat of the issue and to acknowledge that reports are taken seriously and addressed appropriately.

Next, the CEP could consider surveying the workforce or providing additional team, departmental, division, or company training regarding sexual harassment. More information is needed to determine if it is an individual issue or a larger issue of misunderstanding.

Priority is to address the issue at hand and then look for wider implications. It is important not to overreact to a single incident.

Question 2

Training on price-fixing is MOST important for which of the following staff?

A. management
B. sales
C. marketing
D. accounting

U.S. Federal Sentencing Guidelines - Chapter 8

“The likelihood that certain criminal conduct may occur because of the nature of the organization’s business. If, because of the nature of an organization’s business, there is a substantial risk that certain types of criminal conduct may occur, the organization shall take reasonable steps to prevent and detect that type of criminal conduct. For example, an organization that, due to the nature of its business, employs sales personnel who have flexibility to set prices shall establish standards and procedures designed to prevent and detect price-fixing. An organization that, due to the nature of its business, employs sales personnel who have flexibility to represent the material characteristics of a product shall establish standards and procedures designed to prevent and detect fraud.”
**Question 3**

Compliance and ethics training should be required of employees

A. who deal with issues identified by a risk assessment
B. who supervise or manage others
C. in all parts of the organization
D. who have direct contact with the public

US Federal Sentencing Guidelines Chapter 8

(4) (A) The organization shall take reasonable steps to communicate periodically and in a practical manner its standards and procedures, and other aspects of the compliance and ethics program, to the individuals referred to in subparagraph (B) by conducting effective training programs and otherwise disseminating information appropriate to such individuals' respective roles and responsibilities.

(B) The individuals referred to in subparagraph (A) are the members of the governing authority, high-level personnel, substantial authority personnel, the organization's employees, and, as appropriate, the organization's agents.

**Question 4**

In which of the following would an employee's obligation to report misconduct MOST likely be discussed?

A. job interview
B. manager's meetings
C. new employee orientation
D. audit committee meetings

New Employee Orientation is when you set expectations for employees and give them information about how to report misconduct.
Question 5

Which of the following is a key component of a compliance and ethics program?

A. on-going training  
B. employee surveys  
C. monthly employee meetings  
D. company newsletter

See Federal Sentencing Guidelines Chapter 8

Question 6

A hotline allows employees and third parties to:

A. Report compliance and ethics violations.  
B. Propose policies related to compliance and ethics.  
C. Communicate compliance and ethics information.  
D. Verify compliance and ethics risks.

US Federal Sentencing Guidelines Chapter 8

(5) The organization shall take reasonable steps—

(C) to have and publicize a system, which may include mechanisms that allow for anonymity or confidentiality, whereby the organization’s employees and agents may report or seek guidance regarding potential or actual criminal conduct without fear of retaliation.
Question 7

Human Resources asks the compliance and ethics professional if the company can provide a vendor with names and email addresses of the company’s sales employees to promote a new incentive plan. Some of the employees live and work in another country. Which of the following is the MOST appropriate action for the compliance and ethics professional to take?

A. Direct Human Resources to comply with the vendor’s privacy policies
B. Ask the vendor to sign a confidentiality agreement before providing the information.
C. Consult the legal department for advice on applicable privacy laws to ensure compliance
D. Instruct HR not to provide the information because it would violate international privacy laws.

Data privacy is a challenging area that is constantly changing as new laws and regulations are passed around the globe.

This document is from 2013 and several of the laws/regulations it mentions have been updated but it gives some background as to why this is an area worth understanding for compliance officers.

Tips for Coping with Global Data Privacy Regimes
Nick D’Ambrosio, JD, Director, KPMG LLP

Question 8

A U.S.-based company has recently acquired a subsidiary with offices in Europe. The compliance and ethics professional has been charged with implementing an anonymous hotline for the new subsidiary. Which of the following should the compliance and ethics professional do FIRST?

A. Consult with resources to determine local laws.
B. Coordinate the installation of an international hotline.
C. Post translated compliance materials on the company intranet.
D. Publish the existing hotline number on the subsidiary’s website.

“Be aware of the restrictions on accepting anonymous complaints. In this situation, employers are advised to encourage “confidential” reporting rather than using the word “anonymous.” Anonymous reports are strongly discouraged in some countries, so be sure your organization (or the local employment attorney) does proper due diligence in order to understand local expectations. The hotline communication materials distributed to employees in these countries should make it clear that reporting is confidential, but on a named basis. Also make sure your hotline and case management systems can handle the potential for anonymous reporters from the US while not allowing anonymous reporting from other countries where applicable.”

Source: https://www.convercent.com/blog/7-important-considerations-for-eu-hotlines
# Education, Training and Communication

<table>
<thead>
<tr>
<th>A.</th>
<th>Disseminate relevant information on emerging risk areas</th>
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<tbody>
<tr>
<td>B.</td>
<td>Communicate compliance and ethics information throughout the organization</td>
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<td>C.</td>
<td>Develop targeted compliance and ethics training for applicable individuals (e.g., risk specific, orientation, remedial)</td>
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<tr>
<td>D.</td>
<td>Evaluate the effectiveness of compliance and ethics training</td>
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<td>E.</td>
<td>Assure that employees are aware of their obligation to report misconduct</td>
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<tr>
<td>F.</td>
<td>Assure that employees are aware of their compliance and ethics aspects of their specific job responsibilities</td>
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<tr>
<td>G.</td>
<td>Promote a culture of compliance and ethics throughout the organization</td>
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<td>H.</td>
<td>Encourage employees to seek guidance and clarification</td>
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<tr>
<td>I.</td>
<td>Ensure that compliance and ethics personnel participate in continuing education to maintain professional competence</td>
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<tr>
<td>J.</td>
<td>Track participation in ongoing compliance and ethics training programs</td>
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<td>K.</td>
<td>Ensure compliance and ethics training is provided for all board members, employees, vendors, and other agents</td>
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<td>L.</td>
<td>Train those who respond to questions and concerns from employees and others on how to identify potential compliance and ethics issues</td>
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<tr>
<td>M.</td>
<td>Manage a compliance and ethics education program</td>
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<tr>
<td>N.</td>
<td>Ensure training delivery methods are appropriate for the audience</td>
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## U.S. Federal Sentencing Guidelines

Training and Communication

"(4) (A) The organization shall take reasonable steps to communicate periodically and in a practical manner its standards and procedures, and other aspects of the compliance and ethics program, to the individuals referred to in subparagraph (B) by conducting effective training programs and otherwise disseminating information appropriate to such individuals’ respective roles and responsibilities.

(B) The individuals referred to in subparagraph (A) are the members of the governing authority, high-level personnel, substantial authority personnel, the organization’s employees, and, as appropriate, the organization’s agents."

"Examples of the informality and use of fewer resources with which a small organization may meet the requirements of this guideline include the following: (I) ....(II) training employees through informal staff meetings, and monitoring through regular "walk-arounds" or continuous observation while managing the organization; "

Training

• All employee training
  • Update as risk areas evolve
  • Board members, employees, vendors, and other agents
  • New employee orientation and ongoing training
  • OBLIGATION to report and HOW to report suspected misconduct!
  • Focus on practical advice and case studies
• Targeted training (e.g., risk specific, orientation, remedial)
  • Sales
  • Buyers
  • Department based vs. role based vs. individually based

Training Continued

• Delivery Methods
  • Know your audience!
  • In person group vs. in person one to one vs. webinar vs. paper-based
  • Just In Time training - Going to China on business? Get training on gift and entertainment limits!
  • Gamification style training (e.g. Compliance Escape Room – Madelyn Archibald at Merz)

• Compliance and Ethics Week Events
Evaluating Effectiveness

- MOST Important - Has behavior changed?
- Pre and post training quizzes
- Trend analysis

- Less important
  - Number of attendees
  - Number of hours of training (“Less can be more”)
  - “engagement”

Communication

- Communicate compliance and ethics information throughout the organization
  - Anonymized descriptions of the type of conduct that leads to discipline (specifically after an employee or employees have been terminated or otherwise disciplined for compliance violations)
- Encourage employees to seek guidance and clarification
- Promote a culture of compliance and ethics throughout the organization - Show support from leadership/CEO

- Methods
  - Email reminders, screensavers, huddles, quizzes, surveys
  - Other ideas?
Compliance Department

Training - Compliance Professionals need to participate too!
Participate in SCCE/HCCA and other professional organizations
Read books, magazines, and blogs

Train those who respond to questions and concerns from employees and others on how to identify potential compliance and ethics issues

Auditing, Monitoring, and Internal Reporting

A. Protect anonymity and confidentiality within legal and practical limits for those reporting
B. Publicize the reporting system to employees, vendors, and third parties
C. Monitor for organizational misconduct (e.g., violations of applicable laws, regulations, policies and procedures)
D. Ensure systems exist to enable employees, vendors, and third parties to report any noncompliance and seek advice (e.g., hotline)
E. Assure processes exist to respond to compliance and ethics concerns expressed through internal reporting
F. Monitor compliance and ethics related activities (e.g., hotline calls, training, and investigations)
G. Analyze compliance and ethics audit results (e.g., track, trend, evaluate, benchmark)
H. Ensure audit results from external entities (e.g., outside counsel, government, consultants) are addressed
I. Audit compliance and ethics related risks
J. Monitor compliance and ethics related risks
K. Evaluate the effectiveness of the compliance and ethics program on an ongoing basis
L. Include compliance and ethics questions in exit interviews
M. Develop a periodic risk-based audit compliance plan
N. Assess the existing risk-based audit compliance plan to address dynamic changes in risk priorities
U.S. Federal Sentencing Guidelines
Auditing, Monitoring, and Internal Reporting

“(5) The organization shall take reasonable steps—
(A) to ensure that the organization’s compliance and ethics program is followed, including monitoring and auditing to detect criminal conduct;
(B) to evaluate periodically the effectiveness of the organization’s compliance and ethics program; and
(C) to have and publicize a system, which may include mechanisms that allow for anonymity or confidentiality, whereby the organization’s employees and agents may report or seek guidance regarding potential or actual criminal conduct without fear of retaliation.”

“Examples of the informality and use of fewer resources with which a small organization may meet the requirements of this guideline include the following:... (II) monitoring through regular “walk-arounds” or continuous observation while managing the organization...”

Internal Reporting

• Protect anonymity and confidentiality within legal and practical limits for those reporting
• Publicize the reporting system to employees, vendors, and third parties
• Ensure systems exist to enable employees, vendors, and third parties to report any noncompliance and seek advice (e.g., hotline)
• Assure processes exist to respond to compliance and ethics concerns expressed through internal reporting
• Include compliance and ethics questions in exit interviews
## Auditing vs. Monitoring

<table>
<thead>
<tr>
<th>Auditing</th>
<th>Monitoring</th>
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<tbody>
<tr>
<td>• Formalized method</td>
<td>• Day to day process by management</td>
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<tr>
<td>• <strong>Independent</strong> from management</td>
<td>• Not required to be <strong>independent</strong></td>
</tr>
<tr>
<td>• Provides objective assurance to board and others</td>
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<tr>
<td>• Concurrent vs. retrospective</td>
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## Monitoring

- Monitor compliance and ethics related risks
- Monitor compliance and ethics related activities (e.g., hotline calls, training, and investigations)
- Monitor for organizational misconduct (e.g., violations of applicable laws, regulations, policies and procedures)
- Evaluate the effectiveness of the compliance and ethics program on an ongoing basis
Independent Monitors

When are they useful?

- Proactively identify problems
- In response to a pattern of complaints
- During or after a regulatory sanction


Auditing

- Audit compliance and ethics related risks
- Analyze compliance and ethics audit results (e.g., track, trend, evaluate, benchmark)
- Ensure audit results from external entities (e.g., outside counsel, government, consultants) are addressed
Compliance Plan

• Develop a periodic risk-based audit compliance plan
• Assess the existing risk-based audit compliance plan to address dynamic changes in risk priorities

HCCA-OIG Resource Guide on Measuring Compliance Program Effectiveness

<table>
<thead>
<tr>
<th>What to Measure</th>
<th>How to Measure</th>
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<tbody>
<tr>
<td>Reporting System:</td>
<td></td>
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<tr>
<td>5.1 Accessibility of reporting system</td>
<td>Interviews, Surveys. Ask employees and managers if the reporting system is accessible to them. Is it available in languages that are most spoken in the organization?</td>
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<tr>
<td>5.2 Adherence to 60-day overpayment rule</td>
<td>Review incident tracker; ensure days to open or days to close do not exceed that timeframe. Track efforts to identify status benchmarks specific days to completion.</td>
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<td>5.3 Trust in the system</td>
<td>Survey - Do you feel you can freely report ethics and compliance issues without fear of retaliation from managers? [Yes/No/Don’t Know].</td>
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<tr>
<td>5.4 Reporting and Investigation Process</td>
<td>Review external benchmarking reports (# of calls, time it takes to close cases, anonymous, etc.).</td>
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| 5.5 Reporting system – compliance response to reporters | Document review: Focused groups and speaking with employees about hotline.  
  • Are calls made through reporting system responsive to reporters?  
  • Are policies followed regarding the response to reports received?  
  • Are reports responded to on regular intervals and updated appropriately? |
| 5.6 Reporting System: Hotline/Direct contacts | Document review, audit:  
  • Are hotline calls or matters brought to the attention of the compliance department (direct contacts) categorized, triaged, and reported to the compliance committee and board level committee?  
  • Are trend tracking, trending and reporting of how these matters have been resolved? |
| 5.7 Reporting to compliance (hotline, report to the compliance officers, etc.) | Reports reflect communication methods (call, anonymity, email, direct, etc.)? |
Evaluation of Corporate Compliance Programs - U.S. Department of Justice:

https://www.justice.gov/criminal-fraud/page/file/937501/download

- United States Attorney’s Manual ("USAM"), in the United States Sentencing Guidelines ("USSG")
- Fraud Section corporate resolution agreements
- Good Practice Guidance on Internal Controls, Ethics, and Compliance adopted by the Organization for Economic Cooperation and Development ("OECD") Council on February 18, 2010

Additional Resources

Compliance Program Effectiveness

Training
Broadcast Compliance Training Blog - http://blog.thebroadcat.com/

Auditing and Monitoring
https://compliance.com/blog/compliance-officers-responsibility-ongoing-auditing-monitoring-high-risk-areas/
Additional Resources

Book
The New Whistleblower’s Handbook by Stephen Martin Kohn, Esq.
- Examples of retaliation
- Whistleblowing in different contexts
- International, Federal and State Protections for Whistleblowers

Fully Compliant by Travis Waugh
- Focus on changing behavior, not just “checking the box”

Creating Great Compliance Training In a Digital World by Kristen Liston
- Published by SCCE
- Measure and manage your impact

Next Session’s Focus
Investigations and Response, Discipline and Incentives
Risk Assessment