CCEP/CCEP-I
Study Group
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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

Investigations and Response, Discipline and Incentives
Risk Assessment

Question 1

A compliance and ethics professional receives a notification from the tax authority concerning revocation of the organization’s tax exempt status. The reason provided was that employees were speaking at political rallies while wearing their work uniforms and identification badges. Which of the following should be the compliance and ethics professional’s FIRST action?

A. contact a tax consultant  
B. identify the employees involved  
C. discuss with internal audit  
D. notify the board of directors

“Engage qualified resources to address investigation needs”
CCEP Detailed Content Outline

- Most compliance officers are not tax experts so engaging a tax consultant can assist the compliance officer with determining how to respond to the tax authority’s accusations

- Employees have a right to free speech so a tax authority may not be able to penalize the organization
Question 2

When responding to an ethics and compliance violation, a compliance and ethics professional must

A. determine the specific discipline  
B. enforce the discipline  
C. ensure the discipline is consistent  
D. ensure the discipline is explained to the violator

U.S. Federal Sentencing Guidelines Chapter 8
"(6) The organization’s compliance and ethics program shall be promoted and enforced consistently throughout the organization through (A) appropriate incentives to perform in accordance with the compliance and ethics program; and (B) appropriate disciplinary measures for engaging in criminal conduct and for failing to take reasonable steps to prevent or detect criminal conduct."

Question 3

Which of the following is the MOST convincing demonstration of the effectiveness of a company’s ethical standards?

A. implementation of an anonymous reporting and feedback system  
B. termination of an executive who embezzled a small amount of money  
C. suspension of an employee who failed to complete compliance training  
D. production of the organization’s professionally printed Code of Conduct

U.S. Federal Sentencing Guidelines Ch 8
"(B) Implementation.—In implementing subsection (b)(3), the organization shall hire and promote individuals so as to ensure that all individuals within the high-level personnel and substantial authority personnel of the organization will perform their assigned duties in a manner consistent with the exercise of due diligence and the promotion of an organizational culture that encourages ethical conduct and a commitment to compliance with the law under subsection (a). With respect to the hiring or promotion of such individuals, an organization shall consider the relatedness of the individual’s illegal activities and other misconduct (i.e., other conduct inconsistent with an effective compliance and ethics program) to the specific responsibilities the individual is anticipated to be assigned and other factors such as: (i) the recency of the individual’s illegal activities and other misconduct; and (ii) whether the individual has engaged in other such illegal activities and other such misconduct."


Question 4

Which of the following is MOST helpful in determining how a company prioritizes risk?

A. historical data  
B. policies and procedures  
C. incentive programs  
D. market competition

“Those who don’t know history are doomed to repeat it.” -George Santayana

“Three broad categories of data are generally incorporated into risk assessments:

- **Historical risk data**, as reflected in the organization’s claims and litigation history as well as internal audit findings
- Information about the external legal, regulatory, business, and political environment in which the organization operates
- Internal perceptions and opinions about frequency and severity of ethics and compliance risks, as well as emerging risk areas.”

Source: “Compliance and Ethics Risk Assessments” By José A. Tabuena

FSG Ch 8

“(A) Assess periodically the risk that criminal conduct will occur, including assessing the following:...

(iii) The prior history of the organization. The prior history of an organization may indicate types of criminal conduct that it shall take actions to prevent and detect.”

Question 5

Which of the following departments in a large drug manufacturing company is most likely to have the highest risk of non-compliance?

A. transportation  
B. customer service  
C. sales and marketing  
D. repair and maintenance

As discussed last week, the FSG specifically mentions sales as having a high risk of noncompliance. Marketing also is a risk area for compliance since they may feel pressure to exaggerate to the purchasers about the benefits of the product or they may not include the proper disclosures about product risks, accidentally or on purpose.
Question 6

A company receives a federal subpoena from the government requesting all of the company’s documents from 1990 to the present. The company’s compliance and ethics professional has been asked to respond to the subpoena and to advise the company’s employees on their role in the process. Which of the following should the compliance and ethics professional do FIRST?

A. Obtain documents and determine which to release  
B. Consult with the company’s general counsel  
C. Gather documents and turn them over to the government  
D. Notify all employees that all documents must be retained

My first thought is that asking for nearly 30 years of all documents is overly broad and general counsel could likely reply to the subpoena and have the court require the government to narrow the request to a subset of documents or shorten the time frame (e.g. only financial document or only ten years). Know when to ask for subject matter expertise, especially with legal issues that could severely impact the organizations functioning.

Question 7

Which of the following BEST describes the purpose of training based upon risk assessment findings?

A. reducing the organization’s legal exposure  
B. educating employees on laws and regulations  
C. educating the board on the compliance program  
D. reducing the organization’s insurance premiums

Compliance is about ensuring that legal and regulatory requirements are met. Training based on risk makes sense since you can target certain departments that are higher risk and you can emphasize the highest risk areas during organization wide training. (E.g. In a mortgage company EVERYONE needs to know and understand fair lending laws at a high level while sales personnel and customer service personnel need more in depth training on it due to the higher risk they pose of violating the laws. Fair lending is a focus area for banking regulators.)

“Mitigation strategies and controls are developed to reduce the likelihood of adverse events; i.e., contain the impact should they occur and improve the ability of the organization to detect problems early. Mitigation steps can include activities such as education and training, new policies and procedures, increased audit activity, new equipment and materials, organizational change efforts, enhanced oversight, or changes in management and reporting structures. Mitigation may also require discontinuing a product line or ceasing to do business in a particular jurisdiction.”

Source: “Compliance and Ethics Risk Assessments” By José A. Tabuena
U.S. Federal Sentencing Guidelines
Investigations and Response

“(7) After criminal conduct has been detected, the organization shall take reasonable steps to respond appropriately to the criminal conduct and to prevent further similar criminal conduct, including making any necessary modifications to the organization's compliance and ethics program.”

“First, the organization should respond appropriately to the criminal conduct. The organization should take reasonable steps, as warranted under the circumstances, to remedy the harm resulting from the criminal conduct. These steps may include, where appropriate, providing restitution to identifiable victims, as well as other forms of remediation. Other reasonable steps to respond appropriately to the criminal conduct may include self-reporting and cooperation with authorities.

Second, the organization should act appropriately to prevent further similar criminal conduct, including assessing the compliance and ethics program and making modifications necessary to ensure the program is effective. The steps taken should be consistent with subsections (b)(5) and (c) and may include the use of an outside professional advisor to ensure adequate assessment and implementation of any modifications.”

U.S. Federal Sentencing Guidelines
Discipline and Incentives

“(6) The organization's compliance and ethics program shall be promoted and enforced consistently throughout the organization through (A) appropriate incentives to perform in accordance with the compliance and ethics program; and (B) appropriate disciplinary measures for engaging in criminal conduct and for failing to take reasonable steps to prevent or detect criminal conduct.”

“5. Application of Subsection (b)(6).—Adequate discipline of individuals responsible for an offense is a necessary component of enforcement; however, the form of discipline that will be appropriate will be case specific.”
Investigations

- Engage qualified resources to address investigation needs
- Conduct internal investigations
  - Define Parameters In Advance- When does Compliance investigate? When does HR investigate?
  - Use and track timing metrics to ensure responsiveness
- Assure there is coordination of voluntary disclosures to regulatory agencies
- Coordinate investigations to preserve applicable privileges (e.g., attorney client privilege)
- Respond to government inquiries and investigations
- Maintain records on compliance investigations

Non-Retaliation

- Assure compliance with the organization's non-retaliation policy
  - During the investigation
  - After the investigation

- Be proactive!

- Under many laws, there are severe penalties for organizations or their employees who retaliate.
Responding After an Investigation

- Respond to compliance and ethics escalations
- Report validated instances of noncompliance through appropriate channels within the organization
- Initiate program enhancements to respond to identified problems or weaknesses in the program
- Participate in the development of internal controls aimed at preventing misconduct (e.g., requiring dual sign-offs on certain conduct)
- Assure management develops corrective action plans in response to noncompliance
- Monitor the effectiveness of corrective action plans
- Periodically analyze reports or investigation findings for patterns of misconduct or other red flags for compliance weaknesses

Discipline

- Assure that discipline is proportionate to violation and consistent across the organization
- Assure that discipline is fair and consistent with the organization's disciplinary policies and procedures
- Assure recommended disciplinary action is documented

Compliance is not responsible for enforcing discipline (usually).

The Discipline Policy typically falls under HR
Typical Progressive Discipline Steps

- Discipline could also involve additional education on a topic
- It should always be proportional to the violation
- Extremely harsh discipline policies can backfire

Incentives

Encourage incentives for compliant and ethical behavior
- Potential concerns?

Ideal Compliance and Ethics Incentives
- Compliance and ethical metrics incorporated into performance evaluations
- Positive Recognition for Compliance and Ethical Behavior (Awards, VIP certificate, etc.)

Be careful if offering incentives with any monetary value (e.g. gift cards, bonuses, etc.)
U.S. Federal Sentencing Guidelines
Risk Assessment

“(c) In implementing subsection (b), the organization shall periodically assess the risk of criminal conduct and shall take appropriate steps to design, implement, or modify each requirement set forth in subsection (b) to reduce the risk of criminal conduct identified through this process.”

“7. Application of Subsection (c).—To meet the requirements of subsection (c), an organization shall:

(A) Assess periodically the risk that criminal conduct will occur, including assessing the following:
   (i) The nature and seriousness of such criminal conduct.
   (ii) 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 ... 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.
   (iii) The prior history of the organization. The prior history of an organization may indicate types of criminal conduct that it shall take actions to prevent and detect.

(B) Prioritize periodically, as appropriate, the actions taken pursuant to any requirement set forth in subsection (b), in order to focus on preventing and detecting the criminal conduct identified ... as most serious, and most likely, to occur.

(C) Modify, as appropriate, the actions taken pursuant to any requirement ... to reduce the risk of criminal conduct identified ... as most serious, and most likely, to occur.”

Risk Assessment

- Must be periodic (annual is not generally required)
- Methodology should be scalable and timely
- Identify a baseline risk assessment of operations
- It is not enough to know about the risk, they must be acted upon by management
Risk Assessment Continued

• Involve an executive-appointed baseline review team
  • Legal, Finance and Operations should be involved
  • Outside experts as needed and resources allow

• Review any previous problem areas (company or industry wide)
  • Compliance Program Guidance from regulators
  • Trade and professional associations are great resources
    • Current issues
    • Emerging Trends

Sources of Information

1. Documents
   a. Previous audit reports or evaluations (Were recommendations followed up on?)
   c. Training Records (Handouts, plans, attendance records)

2. Staff
   a. Conduct interviews
   b. Management’s areas of concern
Risk and Third Parties

- Due diligence must be performed
  - Background checks and license verifications
- Compensation (Does it make sense based on industry and geographic region?)
- Regular evaluations (annual, biannual, etc.)
  - Track red flags and have consequences for misconduct
- Contract provisions to address risk
- Understand of the qualifications and associations of third-party partners (e.g. agents, consultants, and distributors that are commonly used to conceal misconduct, such as the payment of bribes to foreign officials)

Mergers & Acquisitions

- Comprehensive due diligence of any acquisition target
- Flawed or incomplete due diligence can allow misconduct to continue at the target company
  - Potential harm to a business’s profitability and reputation
  - Risk of civil and criminal liability
- Need a process for tracking and remediating misconduct or misconduct risks identified during the due diligence process
- Need a process for implementing compliance policies and procedures at new entities
Developing a Risk Based Compliance Plan

• Must be developed “periodically” which can vary based on the organizations, not necessarily annual (may be more frequent or less)
• Prioritize risks based on internal surveys, benchmarking, peer data
• Include input from across the organization
• Be flexible and adaptable as risks change
• Acknowledge that all risks cannot be addressed every year
• Use as a tool to communicate the results of risk assessment findings to the board and management

Resources

Investigations and Discipline

Compliance Risk Assessments
“Compliance and Ethics Risk Assessments” By José A. Tabuena, MA, JD, CFE, CHC
https://higherlogicdownload.s3-external-1.amazonaws.com/CORPORATECOMPLIANCE/SCCE_Manual_RiskAssessment_excerpt.pdf?AWSAccessKeyId=AKIAJH5D4l4FWRA4BOUA&Expires=1533898932&Signature=8dW1CI7q%2F%2FWgb%2Bk1ILkEmshSOWLrvC0%3D


Foreign Corrupt Practices Act (FCPA)
https://www.sec.gov/spotlight/fcpa/fcpa-resource-guide.pdf (Especially Ch 5)
Cait’s Top Tips for CCEP

• Know the difference between Compliance, HR, Legal, etc.
• Know the role of the Board of Directors in Compliance
• Know what attorney client privilege is and compliance’s role in ensure that it can be used
• Investigate and confirm before taking next action
• “Stop the bleeding” - When you have a substantiated allegation take an initial action
• Know the SCCE Code of Professional Ethics
• Know the FSG Ch 8
• Know the DOJ Compliance Guidance
• Don’t get tripped up by the FIRST, NEXT, BEST option questions by overreacting to the scenario
• Don’t second guess yourself during the exam and go back to change answers unless you are 100% sure

Next Steps

1. Keep Studying
2. Register for your exam
3. Take your exam and let me know how you do

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