



## Elements of An Effective Compliance Program

See the full Investigations Toolkit at [bakerbotts.com](http://bakerbotts.com).

### 1. ENSURE MANAGEMENT IS COMMITTED TO COMPLIANCE POLICY.

- Communicate and demonstrate the importance of compliance from the highest levels of the company. An effective compliance program starts with a strong “tone at the top.”
- Directors and senior management should provide strong, explicit, and visible commitment to corporate compliance policy through action and words.

### 2. MEMORIALIZE COMPLIANCE POLICY IN A WRITTEN CODE.

- Establish a clearly articulated and visible corporate ethics and compliance policy memorialized in a written code.
- Employees need to know what to do—and what not to do—when faced with a tough judgment call involving business ethics.

### 3. CONDUCT REGULAR RISK-BASED REVIEWS.

- Companies change over time through natural growth, mergers, and acquisitions. Compliance policies must also change and grow with the company.
- Periodically evaluate compliance codes based on the company’s evolving risk assessment.

### 4. ASSIGN RESPONSIBILITY FOR OVERSIGHT OF THE COMPLIANCE PROGRAM.

- Assign senior executives responsibility for program implementation and oversight, with autonomy and authority to report directly to independent monitoring bodies, including internal audit and the Board of Directors.
- The compliance program should have appropriate stature within the company, in a position of respect, and funded with necessary resources.

### 5. COMMUNICATE, EDUCATE, AND TRAIN EMPLOYEES ON COMPLIANCE POLICY.

- Communication is key to assure ongoing awareness. Implement mechanisms to ensure the compliance code is effectively communicated to all directors, officers, and employees.
- Where appropriate, training should extend to subsidiaries, distributors, agents, and contractors.

#### Effective compliance programs yield benefits.

- **Prevention & detection** – An effective compliance program may prevent or detect not only risks that could cause legal liability, but also business and reputational harm.
- **Proactive response** – Catching issues before they become public allows the company to be proactive in its response and permits an offensive approach instead of solely a defensive one.
- **Mitigation** – Under the sentencing guidelines, there may be a reduction in a company’s culpability score for effective compliance programs. Similarly, a company may consider self-reporting, which can lead to leniency and/or penalty reductions.

## 6. ESTABLISH A SYSTEM FOR ANONYMOUS AND CONFIDENTIAL REPORTING.

- Establish an effective system for anonymous, confidential, internal reporting of ethical or other concerns as well as potential violations of laws.
- The reporting system should ensure reporting without fear of *retaliation*.

## 7. CREATE A PROCESS TO RESPOND TO AND INVESTIGATE ANY POTENTIAL VIOLATIONS.

- Establish an effective process with sufficient resources for responding to, investigating, and documenting allegations of violations including, where appropriate, independent reviews if there is a conflict of interest or the matter touches senior management.

## 8. IMPLEMENT MECHANISMS TO ENFORCE COMPLIANCE AND DISCIPLINE VIOLATIONS.

- Implement mechanisms designed to enforce the compliance code, including appropriately incentivizing compliance and disciplining violations (e.g., bonus determinations).

## 9. INSTITUTE COMPLIANCE REQUIREMENTS FOR THIRD-PARTY RELATIONSHIPS.

- Institute compliance requirements pertaining to the oversight of all vendors, agents, consultants, and business partners.
- This includes identifying risks, conducting due diligence, instituting controls, monitoring third-parties, and imposing real consequences for violations.

## 10. CONDUCT PERIODIC REVIEWS TO MONITOR AND TEST COMPLIANCE POLICY.

- Conduct periodic reviews and testing of compliance code to improve effectiveness in preventing and detecting violations.
- Compliance programs must evolve with changes in the law, business practices, technology, and culture.

### Compliance programs should be customized.

- The specifics of the compliance program will need to be tailored to the company to be effective and credited by the government.
- Considerations include: size, locations, structure, business practices, and industry.
- DOJ Guidance contains additional compliance information:  
<https://www.justice.gov/criminal-fraud/page/file/937501/download>

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