PART I. COMPLIANCE PROGRAMS UNDER THE SENTENCING GUIDELINES

CHAPTER 1. SENTENCING GUIDELINES: IN GENERAL

IN GENERAL		
§ 1:1	Scope of chapter	
§ 1:2	Brief history of Sentencing Reform Act	
§ 1:3	Changes brought by Sentencing Reform Act	
§ 1:4	—Principal features of pre-guidelines system	
§ 1:5	—Principal features of Sentencing Reform Act and guidelines system	
§ 1:6	Development of initial guidelines	
§ 1:7	Initial implementation of guidelines	
§ 1:8	Fundamentals of guidelines practice	
§ 1:9	—Operation of guidelines	
§ 1:10	—Significance of policy statements and commentary	
§ 1:11	—Plea negotiation and hearing processes	
§ 1:12	—Departures from guidelines in sentencing	
§ 1:13	—Appellate review of guidelines sentences	
§ 1:14	Continuing evolution of guidelines system	
§ 1:15	Constitutionality issues	

CHAPTER 2. CORPORATE SENTENCING GUIDELINES: DRAFTING HISTORY

I. INTRODUCTION

§ 2:1 Scope of chapter

II. STAGE ONE

- § 2:2 Preliminary report
- $\S~2:3$ Philosophical split in commission
- § 2:4 Just punishment philosophy
- § 2:5 Deterrence philosophy
- § 2:6 Public reaction and aftermath

III. STAGE TWO

§ 2:7 1988 discussion draft

	Complia
§ 2:8	Development of deterrence-based guidelines
§ 2:9	Seeds of mitigation for compliance programs
§ 2:10	Internal commission opposition
§ 2:11	Public hearings and aftermath
§ 2:12	New proposals frame discussion
§ 2:13	—Department of Justice proposal
§ 2:14	—Clark proposal
§ 2:15	—Attorney working group proposal
IV. S	STAGE THREE
§ 2:16	1989 preliminary draft
§ 2:17	Public comment
§ 2:18	Chairman's 1990 draft
§ 2:19	Hiatus
§ 2:20	Commission-adopted principles to guide drafting
V. S.	PAGE FOUR
§ 2:21	November 1990 draft
§ 2:22	Business Roundtable emphasis on compliance programs
§ 2:23	Pre-publication staff working group draft
§ 2:24	Commission reaction
§ 2:25	Department of Justice reaction
§ 2:26	Public comment
VI. S	STAGE FIVE
§ 2:27	Final stage of development
§ 2:28	Input from judicial advisory group
§ 2:29	Increased weight given to compliance programs
§ 2:30	Relaxed restrictions on compliance reduction
§ 2:31	Home stretch

VII. THE NEXT STAGE

$\S 2:32$	Epilogue or prologue?	
§ 2:33	2004 Revisions to the Corporate Sentencing Guidelines	
$\S 2:34$	2010 Revisions to the corporate sentencing guidelines	
$\S 2:35$	2023 revisions to sentencing guidelines—Amendment	
	821	
§ 2:36	U.S. Sentencing Commission Proposed Policy Priorities	
	in Review of the Federal Sentencing Guidelines for	
	Amendment Cycle ending May 1, 2024	
8 2.37	December 2023 Proposed Amendments to Federal	

Sentencing Guidelines; Review of Acquitted Conduct Sentencing at Urging of U.S. Supreme Court

CHAPTER 3. CORPORATE SENTENCING GUIDELINES: OVERVIEW

§ 3:1	Scope of chapter
§ 3:2	Retroactivity
§ 3:3	Covered entities
§ 3:4	Covered offenses
§ 3:5	Application to offense involving agents and subsidiary
	organizations
§ 3:6	Remedies—In general
§ 3:7	—Restitution
§ 3:8	—Remedial orders
§ 3:9	—Community service
§ 3:10	—Order of notice to victims
§ 3:11	Determining fine—Criminal purpose organizations
3:12	—Legitimate organizations
§ 3:13	—Inability to pay fine
3:14	—Base fine
3:15	—Using offense level for base fine
§ 3:16	—Multiple counts
3:17	—Gain or loss for base fine
§ 3:18	Large fines under the Guidelines
§ 3:19	Culpability score
§ 3:20	—Minimum and maximum multipliers
§ 3:21	—Relationship of guidelines fine range to statutory
	maximum fines
$\S 3:22$	——Gain or loss
§ 3:23	— — Offense classifications
§ 3:24	— Type of offense
§ 3:25	—Involvement in or tolerance of criminal activity—
	General rule
§ 3:26	— — — Culpable involvement
$\S 3:27$	———Definitions of relevant categories of personnel
§ 3:28	— — Size of organization and culpability score
§ 3:29	—Prior history
§ 3:30	—Violation of order
\$ 3:31	—Obstruction of justice
§ 3:32	—Self-reporting, cooperation, and acceptance of responsibility
§ 3:33	2004 Guidelines Revisions
§ 3:34	Determining fine within range
\$ 3:35	Departures from sentencing guidelines

	COMPLIA
§ 3:36	—Substantial assistance to authorities
§ 3:37	—Other downward departures
§ 3:38	—Upward departures
§ 3:39	Disgorgement
§ 3:40	Implementing sentence of fine
§ 3:41	Fines paid by owners of closely held corporations
§ 3:42	Probation—Imposition
§ 3:43	—Terms and conditions generally
§ 3:44	—Violation of conditions of probation
§ 3:45	Early termination of deferred prosecution
§ 3:46	Special assessments, forfeitures and costs
_	PTER 4. AN EFFECTIVE COMP

PLIANCE

§ 4:1	Scope of chapter
§ 4:2	Impact on sanctions—Fines generally
§ 4:3	—Antitrust offenses
§ 4:4	—Probation
§ 4:5	Defining effective program
§ 4:6	—Structured flexibility
§ 4:7	—Focus on result-oriented efforts
§ 4:8	—Reading program features "into" required seven steps
§ 4:9	—Relevance of ethics and "integrity-based" systems
§ 4:10	Building ethics into compliance programs
§ 4:11	Defining effective program—Conflict between organizations and employees
§ 4:12	Timing issues—Culpability score credit and probation
§ 4:13	—Ongoing nature of implementation
§ 4:14	—Relevance of compliance-related responses
§ 4:15	Mitigation "blockers"—Generally
§ 4:16	—Involvement by certain personnel
§ 4:17	—Failure to report offense
§ 4:18	—Advantages of compliance program despite blockers
§ 4:19	Overview of cases to date
§ 4:20	Effective though not perfect program
§ 4:21	Revisions to the guidelines
8 4.22	Two contrary viewpoints on compliance programs

PART II. ESTABLISHING AN EFFECTIVE COMPLIANCE PROGRAM

CHAPTER 5. THRESHOLD CONSIDERATIONS

I. INTRODUCTION

§ 5:1 Scope of chapter

II. DOCUMENTATION

§ 5:2	In general
§ 5:3	Retain what is required
§ 5:4	Record retention periods for compliance documents
§ 5:5	Train employees on document practices
§ 5:6	Dispose of what is unnecessary
§ 5:7	Protect privileged communications and confidential material
§ 5:8	Restrain creation of unnecessary documentation
§ 5:9	Document the compliance program
§ 5:10	Contents of compliance program files
§ 5:11	Annual compliance reports
§ 5:12	Compliance program governance documentation
III.	GENERAL PRIVILEGES

§ 5:13	Privilege issues generally
§ 5:14	Sources of assaults on confidentiality
§ 5:15	Government subpoenas
§ 5:16	Civil litigation
§ 5:17	Discovery in collateral litigation
§ 5:18	The general public
§ 5:19	Judicial analysis of privilege claims
§ 5:20	Attorney-based privileges- Attorney-client
§ 5:21	Attorney-based privileges—Assertion by client or potential client
§ 5:22	—Communications with attorney or attorney's agent
§ 5:23	—Communications related to seeking of legal advice
$\S 5:24$	—Confidentiality requirement
§ 5:25	Privilege and compliance program documents
§ 5:26	Work-product immunity
§ 5:27	—Overcoming work-product immunity

§ 5:28 Exceptions to privileges

IV. WAIVER OF PRIVILEGE

§ 5:29	In general
§ 5:30	Sarbanes Oxley Act of 2002 and privileged information
§ 5:31	Parties to whom disclosure waives privilege
§ 5:32	Other conduct that may waive privilege
§ 5:33	Implied waiver—Effect of disclosure on related
	materials
§ 5:34	—Disclosure of portion of investigative report
§ 5:35	—Extension of waiver to underlying materials
§ 5:36	—Implied waiver in work-product context
§ 5:37	Limited or selective waiver—Controlling extent of
	distribution
§ 5:38	Limited waiver—Strategies for limited waiver

V. SELF-EVALUATIVE PRIVILEGE

§ 5:41	T	general
0.3.4.1	In o	reneral

§ 5:39

§ 5:40

§ 5:42 Elements of self-evaluative privilege

Common interest exception

- § 5:43 —Standard for privilege
- § 5:44 —Protection of facts or opinions

Crime-fraud exception

- § 5:45 —Limitation of government
- § 5:46 —Protection of mandatory reviews
- § 5:47 —Privilege as discovery rule or rule of evidence
- § 5:48 —Privilege subject to waiver
- § 5:49 —Protection of retrospective reviews or those at issue in litigation
- § 5:50 Case for self-evaluative privilege claim
- § 5:51 Self-evaluative privilege in future

VI. RELATED ISSUES

- § 5:52 Miscellaneous confidentiality issues—Statutory privacy rights
- § 5:53 ——Grand jury materials
- § 5:54 Constitutional issues
- § 5:55 Public rights of access to materials connected with judicial proceedings

Appendix 5-A. Model Statute

CHAPTER 6. COMPLIANCE RISK ASSESSMENT

§ 6:1 Scope of chapter

6:2	Need to assess
6:3	Governmental guidance
6:4	Need to proceed expansively
6:5	Relevant time periods
6:6	Understanding a company's business
6:7	Conceptual framework—"Reasons" and "capacities"
6:8	Information sources
6:9	—Internal documentary sources
6:10	—Other internal sources
6:11	—Internal sources—What should be covered
6:12	—External sources and information sharing
6:13	Documentation and privilege issues
6:14	Use of risk assessment to consider compliance mechanisms
6:15	Relationship between risk assessment and program assessment
6:16	Ongoing nature of assessment
6:17	—Risk assessment in corporate acquisitions
6:18	Building risk assessment into other compliance functions
6:19	Small company risk assessments
6:20	Assessing "third-party" risk (including that of joint ventures and franchisees)
6:21	Behavioral ethics and compliance risks
6:22	Assessing specific areas of risk
6:23	Use of subject matter experts in risk mitigation
6:24	Granular compliance risk assessment
6:25	Ensuring appropriate follow up in mitigating known risks

Appendix 6-A. Compliance Program Risk Inventory

CHAPTER 7. CORPORATE CULTURE AND COMPLIANCE PROGRAMS

§ 7:1	Scope of chapter
§ 7:2	The importance of culture—Two examples
§ 7:3	Values-based best practices as the basis for corporate culture
§ 7:4	Identifying and describing the existing corporate culture
§ 7:5	Surveys, focus groups and interviews
§ 7:6	Examining the tone at the top
§ 7:7	The importance of human resource practices
§ 7:8	Corporate traditions, stories and the "grapevine"
§ 7:9	Corporate subcultures

- § 7:10 The importance of corporate customs and routines
- § 7:11 Perceptions beyond employees
- § 7:12 Assessing corporate culture—Initial considerations
- § 7:13 The limits of the hard data approach
- § 7:14 Risk assessment
- § 7:15 Corporate culture "deep dive"
- § 7:16 The importance of culture beyond compliance

CHAPTER 8. CODES OF CONDUCT

- § 8:1 Scope of chapter: Why a Code?
- § 8:2 Evolution of Codes of Conduct and The Code's Role
- § 8:3 Planning a Code of Conduct
- § 8:4 The Code's Tone, Form and Voice
- § 8:5 Conveying the Message from the Top
- § 8:6 Risk Topic Coverage and Reporting
- § 8:7 A Note on Sarbanes-Oxley and Waivers
- § 8:8 Presentation, Organization and Learning Aids
- § 8:9 Distribution and Certification
- § 8:10 Evaluating A Code's Performance
- § 8:11 Codes of conduct for vendors and other third parties
- § 8:12 Other Written Standards

CHAPTER 9. ASSIGNING COMPLIANCE RESPONSIBILITY

- § 9:1 Scope of chapter
- § 9:2 Need for compliance officers
- § 9:3 Regulatory guidance
- § 9:4 Role of senior management
- § 9:5 Ensuring an effective compliance and ethics program—
 The role of high-level personnel
- § 9:6 Assignment of responsibilities
- § 9:7 Reporting
- § 9:8 Organizational position
- § 9:9 —Chief financial officers
- § 9:10 —Chief legal officers
- § 9:11 —Ethics officers
- § 9:12 —Full-time compliance officers
- § 9:13 —White paper on compliance and ethics officers
- § 9:14 —Complex organizations
- § 9:15 Compliance field infrastructure
- § 9:16 —Subject specific compliance officers
- § 9:17 Compliance committees
- § 9:18 Infrastructure support
- § 9:19 Qualifications

§ 9:20	Evalua	tion and compensation
§ 9:21		ment contracts and other protections for iance officers
§ 9:22	Public	
§ 9:23	Liabilit	y of compliance officers
9:24	Respon	sibilities of all employees
Append	ix 9-A.	Business Unit Compliance Position Description
Append	ix 9-B.	Compliance Officer Position Description
Append	ix 9-C.	Standards of Conduct for Business Ethics and Compliance Professionals
Append	ix 9-D.	Code of Ethics for Compliance and Ethics Professionals

CHAPTER 10. BOARD OVERSIGHT OF THE CORPORATE COMPLIANCE FUNCTION

Scope of chapter
Director compliance obligations: Historical
antecedents
Director duties and board functions—In general
—Oversight of legal compliance
Director and officer standards of care
—Delegating compliance authority
—Business judgment rule
—Caremark decision
—Application of Caremark to corporate officers
Board oversight and due diligence under
organizational sentencing guidelines—In general
—2004 Revisions to the Sentencing Guidelines
—The "what," "when," "who" and "how often" of board oversight
Board oversight and due diligence—Guidance from the Department of Health and Human Services
—Board audit committees
Section 301(4) of Sarbanes-Oxley Act of 2002
Relations with CEO
—Outside director perspective
Relations with general counsel and compliance officer
Relations with auditors
Relations with regulators

CHAPTER 11. CARE IN DELEGATING AUTHORITY

I. IN GENERAL

§ 11:1 Scope of chapter

- § 11:2 Guidelines and business justifications for concern
- § 11:3 Application of guidelines criteria
- § 11:4 What is "conduct inconsistent with an effective compliance and ethics program"

II. SCREENING

- § 11:5 Screening applicants
- § 11:6 Verification of application
- § 11:7 Criminal background checks
- § 11:8 —Best practices
- § 11:9 Polygraphs—Applicants
- § 11:10 Written honesty tests
- § 11:11 Fair Credit Reporting Act

III. MONITORING

- § 11:12 Monitoring current employees
- § 11:13 Feedback regarding current employees
- § 11:14 Polygraphs—Current employees
- § 11:15 Electronic surveillance
- § 11:16 —E-mail
- § 11:17 Searches

CHAPTER 12. TRAINING AND OTHER COMMUNICATIONS

I. INTRODUCTION

- § 12:1 Scope of chapter
- § 12:2 Role of training
- § 12:3 The revised sentencing guidelines
- § 12:4 Judicial decisions and regulatory views
- § 12:5 Communications by senior executives
- § 12:6 Essential training elements and documentation

II. DESIGN AND DELIVERY

- § 12:7 Design and development
- § 12:8 —Needs analysis
- § 12:9 Compliance training curricula
- § 12:10 Design and development—Program design
- § 12:11 —Materials preparation
- § 12:12 —Testing
- § 12:13 Periodic review of training materials
- § 12:14 Delivery

- § 12:15 International training issues
- § 12:16 Training third parties

III. METHODS

- § 12:17 In general
- § 12:18 Task-force exercise
- § 12:19 Case discussion
- § 12:20 Simulations and games
- § 12:21 Role-play exercise
- § 12:22 Individual exercises
- § 12:23 Presentation/lecturette
- § 12:24 Behavior modeling
- § 12:25 Video
- § 12:26 Computer-based training, fixed location
- § 12:27 Web-based training
- § 12:28 "Just-in-time" training and communications

IV. ETHICS TRAINING

- § 12:29 In general
- § 12:30 Basics of business ethics
- § 12:31 Ethics dos and don'ts
- § 12:32 Ethics training approaches
- § 12:33 Training content
- § 12:34 Government mandated ethics and compliance training
- § 12:35 Small company considerations
- § 12:36 Non-training compliance communications

Appendix 12-A. Compendium of Compliance Program Resource Materials

CHAPTER 13. AUDITING, MONITORING AND OTHER INTERNAL CONTROLS

I. IN GENERAL

- § 13:1 Scope of chapter
- § 13:2 Changing shape of auditing and monitoring— External auditing
- § 13:3 —Internal auditing
- § 13:4 —Financial audits
- § 13:5 —Computer audits
- § 13:6 —Compliance programs
- § 13:7 Committee of Sponsoring Organizations of Treadway Commission (COSO)

§ 13:8	2013 Revisions to COSO framework
§ 13:9	Reviewing organizational structure and effectiveness of oversight function
§ 13:10	Evaluating tone at the top
§ 13:11	—Guidelines-driven compliance auditing
§ 13:12	—Reviewing technology usage
§ 13:13	—Keeping current and managing change
§ 13:14	Auditing, monitoring, and surveillance concepts— Framework
§ 13:15	Impact of organization and process design
§ 13:16	Implications of industry and of organizational size
II. AU	JDITS AND TESTS
§ 13:17	Auditing process—Scope of auditing
§ 13:18	—Planning
§ 13:19	—Risk assessment
§ 13:20	Developing the testing plan
§ 13:21	—Using information technology
§ 13:22	—Performance of tests—Controls testing
§ 13:23	—Compliance testing
§ 13:24	—Using information technology
§ 13:25	—Using employee surveys and related mechanisms
§ 13:26	—The role of management reports
§ 13:27	—Work papers
§ 13:28	—Managing audits
§ 13:29	—Report of findings and recommendations
§ 13:30	Auditing case law
III. M	IONITORING AND SURVEILLANCE
§ 13:31	Monitoring process—Scope of monitoring
§ 13:32	—Roles and responsibilities
§ 13:33	—Types of monitoring
§ 13:34	Self-assessments
§ 13:35	Monitoring process—Use of information technology
§ 13:36	—Reporting of exceptions and deficiencies
§ 13:37	—Disposing of exceptions and deficiencies
§ 13:38	—Recordkeeping
§ 13:39	Surveillance process—Developing monitoring and
	surveillance systems
§ 13:40	—Supervisory control
§ 13:41	—Exception reporting
§ 13:42	—Surveillance, information systems and statistical analysis

IV. MISCELLANEOUS MATTERS

§ 13:43 Regulatory reporting and recordkeeping Organizing and staffing audit function—Relationships § 13:44 with other parts of organization Relationships with outside parties § 13:45 § 13:46 Relationships with audit committee § 13:47 Vendor "monitoring" Benefits of auditing and monitoring systems § 13:48 § 13:49 Auditing by lawyers § 13:50 Auditors assisting with other compliance program activities § 13:51 FCPA/Anticorruption auditing § 13:52 Exit interviews § 13:53 Peer reviews § 13:54 Audits of government contractor compliance programs Screening and statistical analysis § 13:55 § 13:56 Auditing: impact of lack of independence on quality of compliance audits § 13:57 Case law on monitoring

V. INTERNAL CONTROLS

- § 13:58 Internal controls—Overview
 § 13:59 Sarbanes Oxley Act of 2002 Internal Controls
 § 13:60 Internal controls—Specific risk areas
 § 13:61 Automating business processes
 § 13:62 Communications channels and messaging
- § 13:62 Communications channels and messaging applications
- Appendix 13-A. Antitrust Compliance Training Feedback
- Appendix 13-B. Compliance Auditing: Red Flags
- Appendix 13-C. Inventory of Audit and Monitoring Tools

CHAPTER 14. RETALIATION, WHISTLEBLOWERS, AND REPORTING SYSTEMS

I. INTRODUCTION

§ 14:1 Scope of chapter

II. WHISTLEBLOWING

- § 14:2 Existing legal protections for whistleblowers
- § 14:3 Whistleblower and government informant protection under the Sarbanes-Oxley Act

§ 14:4	The Dodd-Frank Wall Street Reform and Consumer Protection Act
§ 14:5	2020 Amendments to whistleblower program rules
§ 14:6	2022 Amendments to whistleblower program rules
§ 14:7	SEC Whistleblower Awards—FY 2021
§ 14:8	SEC Office of the Whistleblower Annual Report—FY
5	2022
§ 14:9	—FY 2023
§ 14:10	SEC Office of the whistleblower annual report-FY 2024
§ 14:11	CFTC Whistleblower program
§ 14:12	IRS Whistleblower Program
§ 14:13	DOJ Whistleblower programs
§ 14:14	Standards for establishing retaliation
§ 14:15	Impact of sentencing guidelines on public policy
§ 14:16	2020 Department of Justice Guidance
§ 14:17	Preventing retaliation against whistleblowers—Role
0 1 4 1 0	of corporate culture
§ 14:18	—Policies and procedures
§ 14:19	—Allow anonymous reporting
§ 14:20	—Issue written corporate policies
§ 14:21	—Monitoring from the top
§ 14:22	—Assign case number to each call or letter
§ 14:23	—Follow up with each complainant
§ 14:24	—Keep employees informed
§ 14:25	—Promise confidentiality
§ 14:26	—Limit identification of whistleblower
§ 14:27	—Avoid retaliatory personnel actions
§ 14:28	Training
§ 14:29	Evaluation and adjustment of policy
§ 14:30	Outside hotline operators
§ 14:31	Small company considerations
§ 14:32	SEC Enforcement Actions—Rule 21F-17
III. R	REPORTING SYSTEMS
§ 14:33	Corporate ombuds as one option
§ 14:34	Privilege protection for ombuds offices
§ 14:35	Reporting system options
§ 14:36	Sarbanes-Oxley Act of 2002—Reporting systems required and other mandates
§ 14:37	—Reporting by lawyers
§ 14:38	Lawyers and whistleblower bounties: ethical issues
§ 14:39	Handling calls unrelated to compliance
§ 14:40	Assumptions about calls and calling patterns

CHAPTER 15. RESPONSE TO PROBLEMS: INVESTIGATIONS, DISCLOSURE OF VIOLATIONS, AND CRISIS RESPONSE

I. INTRODUCTION

§ 15:1 Scope of chapter

II. INVESTIGATION

_		
§	15:2	Circumstances in which an internal investigation
		may be initiated
§	15:3	Benefits to the corporation
§	15:4	Costs incurred
§	15:5	Determining the point at which an investigation should be initiated
§	15:6	Strategic considerations
§	15:7	Choosing investigators
§	15:8	Independence
§	15:9	Preventing undesired disclosures
§	15:10	Establishing investigative guidelines
§	15:11	Training investigators
§	15:12	Document review and witness interviews
§	15:13	Responding to government investigations
§	15:14	Using experts
§	15:15	Conflicts of interest

III. DISCLOSURE

§ 15:16	Report preparation and presentation
§ 15:17	Disclosure to government
§ 15:18	—Partial disclosure
§ 15:19	Persuading government not to prosecute
§ 15:20	Persuading the government not to prosecute-Waiver
	of the attorney-client privilege
§ 15:21	Persuading government not to prosecute-Legal fees
§ 15:22	Disclosure to public
§ 15:23	Internal responses to report
§ 15:24	Collateral dangers to counsel
§ 15:25	Legal action by those implicated by investigation
§ 15:26	Legal action by those harmed by corporate
	wrongdoing
§ 15:27	Criminal liability for failure to disclose misconduct

IV. CRISIS RESPONSE

§ 15:28 Crisis management—In general

- § 15:29 Crisis management team
 § 15:30 Action plan
 § 15:31 Simulations
 § 15:32 Educational efforts
- § 15:33 Other remedial measures
- § 15:34 Conclusion

CHAPTER 16. EMPLOYEE DISCIPLINE AND INCENTIVES

I. IN GENERAL

- § 16:1 Scope of chapter
- § 16:2 Nonguideline justifications for disciplinary system
- § 16:3 Caselaw
- § 16:4 Types of discipline—Informal and formal reprimands
- § 16:5 —Demotion
- § 16:6 —Financial penalties
- § 16:7 —Suspension
- § 16:8 —Discharge
- § 16:9 —Civil and criminal remedies
- § 16:10 —Alternative remedies
- § 16:11 Grounds for discipline—Violations of laws, regulations or company policies
- § 16:12 —Failure of managerial responsibility
- § 16:13 —Intentional misconduct
- § 16:14 —Extent of harm
- § 16:15 —Effect of self-disclosure
- § 16:16 —Third-party considerations
- § 16:17 Disciplining key employees
- § 16:18 Procedures for determining grounds for discipline

II. PROCEDURES

- § 16:19 Disciplinary process—Formality versus informality
- $\S~16:20$ Employee recourse to legal counsel
- § 16:21 Employee access to information
- § 16:22 Disciplinary decision and appeal
- § 16:23 —Grievance procedures
- § 16:24 —Represented workforces
- § 16:25 Timing of disciplinary action
- § 16:26 Timing of discipline in light of parallel criminal proceedings
- § 16:27 Publication of disciplinary decisions
- § 16:28 Variations in approach between small and large organizations

III. INCENTIVES AND RELATED MATTERS

- § 16:29 Evaluations, incentives and rewards
- § 16:30 —Concerns about using evaluations and rewards
- § 16:31 —Reasons to use evaluations and rewards
- § 16:32 —How to use evaluations and rewards
- Appendix 16-A. Form—Communication to Employees
- Appendix 16-B. Model Policy—Guidelines for Disciplinary
 Action for Violations of the Employee Code
 of Conduct
- Appendix 16-C. Taking a Disciplined Approach to Discipline— Enforcing Compliance Standards

CHAPTER 17. MEASURING THE EFFECTIVENESS OF COMPLIANCE AND ETHICS PROGRAMS

- § 17:1 Scope of chapter
- § 17:2 Evolving legal standards
- § 17:3 The business case—Risk management
- § 17:4 —The bottom line
- § 17:5 Effectiveness indicators—The need for comprehensive measures
- § 17:6 —Program design
- § 17:7 Program design—Other sources
- § 17:8 Effectiveness indicators—Program implementation
- § 17:9 —Program impact
- § 17:10 Tailoring the measurement process
- § 17:11 Evaluating the compliance officer (and others responsible for compliance)
- § 17:12 —Assigning responsibility according to "jurisdiction"
- § 17:13 —Special functions
- § 17:14 —Maturity of the program
- § 17:15 —Problem of non-expert evaluators
- § 17:16 Evaluating incident reporting
- § 17:17 Who performs the evaluation?
- § 17:18 How high should the bar be set in an assessment?

Appendix 17-A. Inventory of Measurement Tools

CHAPTER 18. ETHICS AND COMPLIANCE SURVEYS

- § 18:1 Scope of chapter
- § 18:2 Reasons to use ethics and compliance surveys
- § 18:3 Reasons for concerns about surveys

§ 18:4	Assessing survey efficacy
§ 18:5	Drafting survey questions and designing the survey
§ 18:6	Benchmarking
§ 18:7	Anonymity and trust
§ 18:8	Pressure to ensure the "right" answers
§ 18:9	Consolidation and data-mining
§ 18:10	Surveys and the misallocation of resources
§ 18:11	Benchmarking—Issues of leveling and sameness
§ 18:12	Conclusion

CHAPTER 19. INDUSTRY PRACTICE: THE DEFENSE INDUSTRY EXPERIENCE

I. INTRODUCTION

§ 19:1	Scope of chapter
-	Industry practice case law
-	Defense Industry Initiative (DII) principles
§ 19:4	DII best practices forums
§ 19:5	DII public accountability
	-

II. SIGNATORY PROGRAMS

§	19:6	DII signatory programs—In general
§	19:7	Codes of conduct
§	19:8	Business courtesies
§	19:9	Kickbacks
§	19:10	Conflicts of interest
§	19:11	Employing and recruiting current or former government personnel
§	19:12	Confidential information
§	19:13	Use of company resources
§	19:14	Complete and accurate books, records, and communications
§	19:15	Bidding, negotiation, and performance of contracts
§	19:16	Charges to government
§	19:17	Relationships with suppliers and representatives
§	19:18	Inside information and investment in securities
§	19:19	Antitrust and restriction of trade
§	19:20	International business practices
§	19:21	Workplace relationships
§	19:22	Corporate citizenship and relations with community
§	19:23	Political contributions
8	19:24	Product quality
_	19:25	Environmental compliance

§ 19:26 Financial accounting and disclosure

III. PROGRAM MECHANICS

§ 19:27	Distribution of codes of conduct
§ 19:28	Orientation
§ 19:29	Training programs
§ 19:30	Internal reporting mechanisms
§ 19:31	—Confidentiality
§ 19:32	—Avoidance of retaliation
§ 19:33	—Investigation
§ 19:34	—Staffing
§ 19:35	—Report back
§ 19:36	—Types of calls
§ 19:37	Communication with employees
§ 19:38	—Written communication
§ 19:39	—One-on-one communication
§ 19:40	—Innovative approaches
§ 19:41	Internal audits and compliance
§ 19:42	—Internal audit subjects
§ 19:43	—Internal audit organization
§ 19:44	Voluntary disclosure
§ 19:45	—Voluntary disclosure policies
§ 19:46	—Disclosure decisions
§ 19:47	Board of directors involvement
§ 19:48	Compliance organizations
§ 19:49	—Responsibilities
§ 19:50	—Committee membership
§ 19:51	—Multiple compliance organizations and
	specialization
§ 19:52	Evaluation
§ 19:53	—Surveys
§ 19:54	—Other methods of evaluation
§ 19:55	Employee discipline
§ 19:56	—Types of discipline
§ 19:57	—Disciplinary systems
§ 19:58	Performance appraisal and ethics
§ 19:59	Industry practices in other industries
Appendix	19-A. Defense Industry Initiative on Business Ethics and Conduct
Appendix	19-B. Department of Defense Inspector General Voluntary Disclosure Program

CHAPTER 20. LABOR AND EMPLOYMENT ISSUES

§ 20:1 Scope of chapter

§ 20:2	Overview
§ 20:3	Public employers
§ 20:4	Independent contractors
§ 20:5	Federal labor relations law governing union
	employees
§ 20:6	—Compliance programs as subjects of bargaining
§ 20:7	Labor law restrictions on employee social media
6.00.0	policies
§ 20:8	Labor law restrictions on employer rules
§ 20:9	Federal labor relations law governing union employees—Discipline and collective bargaining agreements
§ 20:10	At-will employment
§ 20:11	—Implied contract
§ 20:12	—Public policy
§ 20:13	Investigative interviews of non-union employees and labor law
§ 20:14	Defamation
§ 20:15	Intentional infliction of emotional distress
CITAT	
_	TER 21. GLOBALIZING THE
COMI	PLIANCE PROGRAM: WHY AND HOW
§ 21:1	Scope of chapter
§ 21:2	Why globalize the compliance program?
§ 21:3	Legal and enforcement trends around the world
§ 21:4	The application and enforcement of U.S. law overseas
§ 21:5	Global trends—Compliance and ethics programs
§ 21:6	ISO 19600: 2014 Compliance management systems
§ 21:7	The OECD Good practice guidance
§ 21:8	Global trends—Compliance programs under Italian law
§ 21:9	Compliance as a defense in Spain
§ 21:10	Compliance as a defense in other OECD countries
§ 21:11	Compliance programs under French law
§ 21:12	Canadian Corruption of Foreign Public Officials Act
§ 21:13	United Kingdom's Bribery Act and Fraud Sentencing Guidelines
§ 21:14	Compliance programs as an obligation in Russia
§ 21:15	Compliance programs in Ukraine
§ 21:16	Compliance program standards in Asia
§ 21:17	Compliance program standards in Latin South America
	rimerica
§ 21:18	The business imperatives

§ 21:20	Codes, standards and procedures, and risk
	assessment
§ 21:21	Compliance officers, infrastructure and senior management
§ 21:22	Due diligence, background checks and evaluations
§ 21:23	Training and communications
§ 21:24	Audits, monitoring and helplines
§ 21:25	Legal impediments to helplines
§ 21:26	Discipline
§ 21:27	Responses and investigations
§ 21:28	Agents and other third parties
§ 21:29	Translations
§ 21:30	Going forward
§ 21:31	Whistleblowing: A global perspective
§ 21:32	Global whistleblower protection
§ 21:33	Impediments to whistleblowing
§ 21:34	Corporate strategies to encourage communication
§ 21:35	Involve international management
§ 21:36	Clarify what constitutes wrongdoing
§ 21:37	Establish and communicate whistleblowing policies and procedures
§ 21:38	Tailor the message to the culture
§ 21:39	Facilitate the reporting process
§ 21:40	Provide local or regional resources
§ 21:41	Review policies and establish performance measures
§ 21:42	Taking a realistic approach to whistleblowing

Appendix 21-A. Globalizing the Code of Conduct

CHAPTER 22. IMPLEMENTING A COMPLIANCE AND ETHICS PROGRAM IN CHINA

§ 22:1	Introduction
§ 22:2	U.S. law aspects of implementing a program in China
§ 22:3	U.S. law not applicable in China
§ 22:4	The tyranny of distance
§ 22:5	The Chinese compliance environment—In general
§ 22:6	Changing China and Hong Kong SAR Relationship
§ 22:7	Training
§ 22:8	The role of incentives
§ 22:9	Understanding the law
§ 22:10	Relationship with the Chinese government, the Communist party, and unions
§ 22:11	The role of the party and labor unions in conducting investigations and drafting codes of conduct

§ 22:12	U.SChina relations
§ 22:13	Chinese employment law
§ 22:14	Anti-bribery legislation
§ 22:15	Privacy, data protection, and defamation legislation— Implications for reporting systems
§ 22:16	Whistleblower protection
§ 22:17	Joint annual inspection
§ 22:18	Position of supervisor
§ 22:19	Other Chinese laws
§ 22:20	Conclusion

PART III. COMPLIANCE PROGRAMS IN COURT AND BEYOND

CHAPTER 23. COMPLIANCE PROGRAMS AND CRIMINAL LAW

I. IN GENERAL

§ 23:1	Scope of chapter
§ 23:2	Avoiding criminal prosecution through compliance— Prosecution viewpoint
§ 23:3	Application of Corporate Criminal Compliance Policy: Compliance and Federal Enforcement Positions
§ 23:4	Federal prosecution of business organizations
§ 23:5	—Relevant cases
§ 23:6	—State and local enforcement positions
§ 23:7	Compliance program as a defense to criminal liability
§ 23:8	—Case law history
§ 23:9	—Jury instructions on significance of compliance programs

II. TRIAL PRACTICE

§ 23:10	Compliance programs at trial
§ 23:11	Compliance defense themes
§ 23:12	Preparing for cross-examination
§ 23:13	Preparing defense case-in-chief
§ 23:14	Document preparation and maintenance
§ 23:15	Prosecution cross-examination and rebuttal

III. INDEPENDENT MONITOR

§ 23:16 Court-imposed monitor

CHAPTER 24. IMPACT OF CORPORATE COMPLIANCE OUTSIDE THE CRIMINAL PROCESS

§ 24:1	Scope of chapter
§ 24:2	Legal framework for vicarious liability
§ 24:3	—Scope of employment
§ 24:4	Recognition of compliance efforts by federal
	regulatory agencies in civil contexts
§ 24:5	EPA's self-policing and disclosure policy
§ 24:6	HHS's model compliance program initiative
§ 24:7	—Model plan for clinical laboratories
§ 24:8	—Compliance program "guidance" for hospitals
§ 24:9	—HHS's continuing role in compliance
§ 24:10	The Health Care Reform Law of 2010
§ 24:11	FTC competition bureau approach to compliance
0.04.40	programs
§ 24:12	Guidance on FCPA compliance programs
§ 24:13	Compliance efforts and punitive damages
§ 24:14	—Specter of punitive damages
§ 24:15	—Vicarious liability for punitive damages
§ 24:16	Kolstad and punitive damages
§ 24:17	Sexual harassment in workplace
§ 24:18	—Company policies regarding sexual harassment
§ 24:19	Securities industry Chinese Walls
§ 24:20	—Evolution of Chinese Walls
§ 24:21	—Courts and Chinese Walls
§ 24:22	—Federated proceedings
§ 24:23	—Regulatory guidance regarding Chinese Walls
§ 24:24	Compliance as an international defense
§ 24:25	Modified due diligence standard
§ 24:26	Self-regulatory organizations
§ 24:27	SEC Enforcement Manual and Investigation Cooperation Policy
§ 24:28	Insider trading compliance
§ 24:29	Required privacy compliance programs
§ 24:30	Compliance programs required by state law
§ 24:31	Compliance programs required for U.S. government contractors
§ 24:32	False claims of compliance as a securities fraud
§ 24:33	Commerce Department Enforcement

APPENDICES

Appendix A1. Chapter 8 to United States Sentencing

Commission Guidelines Manual: Sentencing of Organizations (November 2021) Department of Justice—September 2022 Appendix A10. Revisions to Corporate Criminal **Enforcement Policies** Department of Justice—January 2023 Appendix A15. Revisions to Criminal Division's Corporate **Enforcement Policy** Justice Department Speech on Corporate Appendix A20. Compliance and Enforcement Criminal Division Corporate Enforcement and Appendix A30. Voluntary Self-Disclosure Policy Appendix B. U.S. Department of Justice—Factors in Decisions on Criminal Prosecutions for Environmental Violations in the Context of Significant Voluntary Compliance or Disclosure Efforts by the Violator Model Compliance Plan for Clinical Appendix C. Laboratories Appendix D. Good Practice Guidance on Internal Controls, Ethics, and Compliance Appendix E. Glossary Appendix F. Justice Manual (formerly "U.S. Attorney's Manual") sections 9-28.000-9-28.1600 Justice Manual, section 9-47-120 FCPA Appendix G. Corporate Enforcement Policy Appendix H. Justice Manual, section 1-12.100 Coordination of Parallel, Criminal, Civil, Regulatory, and Administrative Proceedings Appendix I. Organizational Worksheets Appendix J. Federal Antitrust Crime: A Primer for Law Enforcement Personnel U.S. Department of Justice Criminal Division Appendix K. Evaluation of Corporate Compliance Programs (Updated September 2024) Appendix L. U.S. DOJ Antitrust Division-Evaluation of Corporate Compliance Programs in Criminal Antitrust Investigations-November

Table of Laws and Rules

Table of Cases

2024

Index