

What are the Elements of an Effective FCPA Compliance Program?
Berland on the OECD Good Practice
Guidance on Internal Controls, Ethics, and Compliance

In our last blog posting we discussed the speech by Assistant Attorney General, for the Criminal Division of the US Department of Justice (DOJ), Lanny Breuer at the Compliance Week 2010 Annual Conference where he outlined what he believed are elements of an effective FCPA compliance program. One of the sources Breuer cited as a benchmark is the Organization for Economic Co-operation and Development OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance. We were therefore pleased when we received a copy of this quarter's Society of Corporate Compliance and Ethics Magazine (SCCE) (Vol. 7 / No. 3) and found an article by our colleague Russ Berland on this source material referenced by Breuer in his talk.

Berland began with a background discussion of the genesis of the Working Group on Bribery in International Transactions Organization for the OECD and its development of the specific elements of a compliance program. In his article Berland, lists 12 specific instructions for companies to utilize as a basis to construct an effective compliance program upon. They are:

1. A culture of compliance with the appropriate "tone at the top".
2. Clearly articulated and visible policy against bribery and corruption.
3. It must be the duty of every employee to comply with a company's anti-bribery program.
4. One or more senior officers in charge of the compliance program who must report directly to the Board or appropriate Board Committee.
5. Design the compliance program to prevent and detect bribery and corruption.
6. Make the program applicable to third party business partners.
7. Have a system of internal financial controls in place to ensure that bribery and corruption cannot be hidden.
8. Have periodic communications and training on the compliance program.
9. Provide positive support for employees to comply with the compliance program.
10. Consistently discipline employees for violations of the compliance program.
11. Provide guidance and advice for employees on the compliance program.
12. The compliance program should be periodically re-assessed and re-evaluated to take into account new developments.

Near the end of his article, Berland asks the question, will DOJ prosecutors find a company's FCPA compliance program "effectively designed when it was based on the OECD guidance?" Much like Socrates (in that he knows the answer to his question), Berland responds "The answer should be yes." We heartily agree and thank Russ for his much needed article providing specific guidance on what the OECD finds to be the elements of an effective compliance program.

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