Internal Audit Department

Compliance Risk Assessment

January 10, 2022
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This report is intended for the information and use of the Arizona Board of Regents, NAU administration, the Arizona Office of the Auditor General, and federal awarding agencies and subrecipients.

Northern Arizona University
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Summary

Completing this Compliance Risk Assessment was approved in the Fiscal Year 2020 Internal Audit Plan by the Audit Committee of the Arizona Board of Regents (ABOR). This assessment supports all Northern Arizona University (NAU / University) strategic goals by assessing the existence of policy, procedure, processes, or other activities that support NAU's compliance with applicable key laws, rules, and regulations, which can impact achievement of one or more of NAU's strategic goals.

Background: Compliance risk can be defined as the challenges and opportunities resulting from an organization's tenacity in complying with applicable federal, state, and local laws, rules, and regulations. On the challenge side, compliance risk is the threat posed to an organization's financial, organizational, or reputational standing resulting from violation of such laws, rules, regulations, and related organizational codes of conduct or standards of practice. On the opportunity side, compliance risk represents the avoidance of such challenges in addition to the maintenance and / or increase in funding sources such as those supporting student financial aid and NAU research.

The importance of proactively maintaining an effective compliance program has never been more critical as a component of overall organizational governance. For the past decade or more, higher education has been experiencing an era of increasingly complex and evolving regulatory activity at the federal and state levels, that often changes notably from one US political administration to the next. During this same time, NAU has grown on many levels including student enrollment, financial commitments, and federally funded research activity. As such, both higher education in general, and NAU specifically, have had to adapt to ever-growing demands for accountability from policy makers, regulators, and the public. On top of this existing complexity, NAU must now address the regulatory impact of the recent health pandemic in terms of required compliance with the CARES/HEERF Act and related legislation.

In the words of Janice M. Abraham, president and CEO of United Educators Insurance and author of a new Association of Governing Boards (AGB) book, *Risk Management: An Accountability Guide for University and College Boards*, "Although not at the level of financial institutions and utilities, higher education faces a labyrinth of rules and regulations that must be followed. Noncompliance can lead to fines, liabilities, and/or reputational risk. Compliance requirements vary according to the size, complexity, and mission of the institution. However, all institutions must comply with a core set of employment, financial, safety, and environmental regulations." While Ms. Abraham does not reference research, federal granting agencies like the Department of Defense, National Institutes of Health (NIH), and National Science Foundation (NSF) place notable expectations on its grantee organizations and with NAU's growth in research over the past several years, the need for focused compliance efforts and supporting institutional processes and resources appears notable.

Assessment Objective: To create an inventory of key compliance requirements applicable to NAU and complete a related high-level gap assessment to determine if each requirement is supported by some evidence of being addressed. The nature of this high-level assessment is not to categorize or necessarily identify areas of higher compliance concern but to determine if there are gaps in NAU's compliance with the federal and state laws, rules, and regulations applicable to NAU.

Scope: The scope included key federal and Arizona State laws, rules, and regulations applicable to higher education institutions, and specifically determined to be applicable to NAU. Under Arizona State law, NAU is exempt from complying with local laws, rules, and regulations. Therefore, while

NAU does maintain a focus on being a productive and valuable local "citizen," such local laws, rules and regulations are excluded from the scope. The assessment also did not attempt to validate or suggest that actual compliance is or is not occurring; it focused on only identifying some acknowledgement of each related law, rule, and regulation within NAU's compliance and policy documentation.

Methodology: The following procedures were performed to accomplish the audit objective:

- Obtained a comprehensive list of laws, rules, and regulations deemed applicable to higher education institutions as compiled by the Higher Education Compliance Alliance (HECA).
- Updated the HECA list with additional laws, rules, and regulations that appeared applicable to NAU, using resources available from other professional associations (e.g., the Association of College and University Auditors), information gleaned from past audits, internet searches, and discussion with professional peers.
- Identified and updated the HECA list for applicable Arizona State Laws.
- Analyzed each identified law, rule, or regulation to determine applicability to NAU, including consultation with NAU General Counsel and applicable NAU compliance specialists.
- Through NAU web searches, policy library searches, electronic and in-person interviews, and review of related prior audit work, determined if NAU had some policy, procedure, practice, or other activity supporting efforts to comply with each applicable law, rule, or regulation.
- Obtained data from NAU's ABOR-approved list of academic and research university peers regarding the existence and structure of compliance oversight functions.

Conclusion: Overall, there are more than 250 federal (Exhibit A) and Arizona state (Exhibit B) laws, rules, and / or regulations that apply to NAU and, excluding the specific requirements of each, NAU appears to have some evidence of supporting compliance activities to address nearly all those laws, rules, and regulations. As noted in the Scope, this does not suggest that NAU is in strict compliance, but instead indicates that there was either a formal policy or procedure in place, some form or process supporting compliance, related information posted on an official NAU internet web page, or that a noted higher education regulatory reference was not specifically applicable to NAU.

NAU appears to have a compliant culture given the lack of significant compliance gaps identified in this high-level assessment, compliance activities are managed by an accountable individual in each department to which a given regulation applies; there appears to be general concern for ensuring processes support regulatory compliance as based on the work completed for this assessment and past internal audit efforts and results; and, there have been minimal to no federal and state regulatory findings to date. Additionally, NAU has an established risk management function addressing insurable and procurement-related risks and employs full-time compliance specialists for key areas like research, healthcare, and human resources related risks (ADA, Title IX, etc.). However, this culture could benefit from a compliance oversight structure that can help guide activities that have impact across NAU, address compliance practice consistency, and ensure that new, complex regulatory matters receive appropriate attention.

For best practice reference purposes, we contacted NAU's peers to determine how they address compliance oversight. We obtained data from 58 Colleges and Universities identified by ABOR as NAU's peers, which disclosed the following:

NAU Peer Colleges & Universities with Centralized Compliance Functions		
Centralized Compliance	Formal Compliance Function (Individual and/or Department)	Compliance Committee Only
37	31	6
64% of All NAU Peers	84% of Compliance Programs	16% of Compliance Programs

The case for compliance oversight, including completion of robust organization-wide compliance risk assessments and existence of processes for ensuring compliance risk is identified and addressed, is deeply rooted in the U.S. Federal Sentencing Guidelines for Organizations, which establishes the potential for applying "credit" or reduced fines and penalties should an organization be found guilty of a compliance failure. (Source: Deloitte Compliance Risk Assessment whitepaper 2015 – see Exhibit C)

Given NAU's size and complexity, and related compliance activities at its peer institutions, NAU should pursue notable best practices for effective corporate compliance governance. The Society of Corporate Compliance and Ethics (SCCE) identifies a "diligent" compliance program based on seven minimum standards as identified in the above-mentioned Federal Sentencing Guidelines, which are used by federal judges to determine fines when compliance lapses and fraud occur (see Exhibit D):

1. Establish standards of conduct as well as policies and procedures supporting a commitment to compliance and ethics.
2. Delegate an individual or group with operational responsibility, autonomy, and authority for overseeing entity-wide compliance.
3. Create effective, ongoing training methods and open lines of communication.
4. Use internal tools and functions to conduct auditing and monitoring of compliance activities to ensure the effectiveness of the compliance program and detect criminal conduct.
5. Implement a reporting and investigation mechanism that encourages employees to raise concerns that they know will be pursued, resolved, and when applicable, reported to the federal government.
6. Establish appropriate incentives for compliance and disciplinary actions for compliance offenders in line with applicable policy and regulatory requirements.
7. Resolve identified problems in a timely manner and add related issues to monitoring activities.

Observations: The following observations should be taken into consideration in determining the extent of effort NAU may wish to apply in maturing its compliance oversight posture.

- NAU appears to have a generally compliant culture and, based on discussions with individuals in this process as well as through other audit involvement (e.g., audit and special project work, Enterprise Risk Management interviews, etc.), may emphasize compliance at times over the operational benefit or cost/benefit of the business processes implemented to achieve compliance. A more detailed risk assessment, as noted above, could provide the additional information needed to ensure a proper cost / benefit approach to implementing policy, procedure, and practices that address compliance. In this regard,
    - While NAU is maturing implementation of an Enterprise Risk Management framework, the effort has not yet addressed a formal approach to the application of risk appetite and risk

tolerance in evaluating risk. Making the effort to establish guidance such as NAU risk appetite and related risk tolerances could prove beneficial in ensuring the approach to managing compliance risk is balanced to NAU's mission, vision, and strategy.

  - NAU began implementing an administrative service model in March 2020 designed to improve consistency and efficiency in financial, human resources, and research business processes. Improving NAU's understanding of compliance risk and managing those processes relative to risk appetite and risk tolerance guidance, could result in a better application of the shared services model as well as NAU Administrative processes.

- While NAU has reporting mechanisms for addressing specific areas of compliance risk (e.g., Clery Act, Title IX) and has specific individuals and offices tasked with ensuring compliance in certain areas, NAU does not have a centralized, formal reporting structure for compliance. Such a centralized reporting structure could assist NAU to better address potential compliance infractions (thereby avoiding any such infractions resurfacing as whistleblower activities).
- Laws, rules, and regulations do not always clearly articulate what constitutes compliance or how to operationalize processes to ensure compliance. Ensuring consistent practices as supported by formal codes of conduct, implemented policy and procedure, and executive oversight can help deter regulatory action against NAU, even when it may be determined that a given approach must be changed.

Like many higher education institutions, NAU has limited resources and must thereby balance its strategic priorities and compliance risks with the compliance program structure it chooses to implement. In this regard, there are various, yet to be determined options, that may prove beneficial for NAU, including but not limited to:

- Establishing an executive working group to further assess the true compliance risk and the nature of any formal compliance office or function to be established. Such a group might also research available corporate compliance guidance and the specific activities of peer organizations for useful practices to help NAU determine its best approach.
- Establishing a formal, multi-disciplinary / cross-functional compliance oversight committee as a central oversight body that can help ensure consistency in compliance risk assessment practices, address compliance matters that impact all or broad aspects of NAU, and provide guidance for complex and new compliance requirements. Such committees typically meet periodically at regular intervals to discuss emerging compliance risks and to chart progress ensuring older compliance risks remain addressed. Such a committee might also initially serve as the working group noted above.
- Formalizing the existing decentralized compliance leadership for some type of periodic reporting either to a committee as noted above or a key executive or leader.
- Continuing under the current structure, given current indications of a strong compliance culture, and pending any future initiatives, issues, etc. that warrant reconsideration for such oversight.

The assessment identified certain individual laws, rules, and regulations for which a compliance approach was not necessarily evident, and we shared those gaps with applicable executives, directors, and managers. None of these potential compliance gaps were deemed to be significant relative to all applicable laws, rules, and regulations.

Since this was not an audit, the typical General Control Standard matrix is excluded from this section of the audit report since individual controls were not being validated. However, the applicable General Control Standard category is "Compliance with Laws and Regulations" whereby the assessment addressed the existence of NAU policy, procedure, practice, or other activities that supported existence of compliance efforts related to a given law, rule, or regulation.

We appreciate the assistance and cooperation provided by the following offices:

- Comptroller
- Enrollment Management / Financial Aid
- Environmental Health & Safety
- Equity & Access
- General Counsel
- Government Affairs
- HIPAA Compliance
- Human Resources
- IT Security
- NCAA Compliance
- Research Compliance
- Risk Management
- Student Affairs

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EXHIBIT A – Notable FEDERAL Laws, Rules & Regulations Applicable to NAU

Title (Alpha Order)	
Affirmative Action / Equal Employment Opportunity / Executive Order 11246	Hazardous Building Materials: Asbestos
Age Discrimination Act of 1975	Hazardous Building Materials: Lead
Age Discrimination in Employment Act of 1967	Hazardous Building Materials: PCB
America COMPETES Act	Hazardous Building Materials: Silica
Americans with Disabilities Act of 1990	Health Information Technology for Economic and Clinical Health Act (HITECH) of 2009
Animal Welfare Act	Health Insurance Portability and Accountability Act (HIPAA)
Arms Export Control Act	Higher Education Act of 1965, Section 117 Reporting - Foreign Influence
Byrd Amendment	Higher Education Act: Institutional and Financial Assistance Information for Students
Cafeteria Plan Regulations	Higher Education Act: Institutional and Financial Assistance Information for Students: Disclosure of Fire Safety Standards and Measures
California Privacy Rights Act (CPRA)	Higher Education Act: Institutional and Financial Assistance Information for Students: Missing Person Procedures
Campus Sex Crimes Prevention Act (§ 1601 of the Victims of Trafficking and Violence Protection Act of 2000)	Higher Education Act: Program Participation Agreements
Children's Online Privacy Protection Act of 1998 (COPPA)	Higher Education Act: Readmission Requirements for Servicemembers
Civil Rights Act of 1964	Higher Education Act: Recognition of Accrediting Agency or Association
Civil Service Reform Act of 1978	Higher Education Act: Teacher Preparation Programs / Teacher Quality Partnership Grants
Clinical Trials § Financial Disclosures by Investigator	Higher Education Act: Textbook Information
Consolidated Omnibus Budget Reconciliation Act (COBRA)	Higher Education Emergency Relief Funds (HEERF)
Consumer Credit Protection Act, Title III (CCPA) – Garnishments	Higher Education Opportunity Act
Controlled Substances Act	Higher Education Opportunity Act: Textbook Information
Controlled Unclassified Information (CUI) program	Immigration and Nationality Act
Controlling the Assault of Non-Solicited Pornography And Marketing Act of 2003 (CAN-SPAM Act)	International Emergency Economic Powers Act
Coronavirus Aid, Relief, and Economic Security (CARES) Act	International Traffic in Arms Regulations (ITAR)
Deferred Compensation	IRS 1098-T Reporting requirements
Department of Commerce, Bureau of Industry and Security: Export Administration Regulations (EAR)	Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), and Violence Against Women Act (VAWA)
Department of Education General Administrative Regulations and Other Applicable Grant Regulations	Leveraging Educational Assistance Program (LEAP)
Dept of Health and Human Services Grants Policy Statement	Lilly Ledbetter Fair Pay Act of 2009
Drug & Alcohol Testing of Transportation Employees	Lobbying Disclosure Act of 1995
Drug Free Schools and Communities Act	Medicare, Medicaid, and SCHIP Extension Act of 2007
Drug Free Workplace Act (The Safe and Drug-Free Schools and Communities Act (20 U.S.C. § 7101, et seq.), and the Drug and Alcohol Abuse Prevention Regulations (34 C.F.R. 86, et seq.))	National Labor Relations Act
Electronic Communications Privacy Act	National Science Foundation Research Misconduct Policies
Emergency Planning and Community Right to Know Act (EPCRA)	NCAA bylaws
Employee Annuities	NIST 800-171, a federal cybersecurity framework
Employee Polygraph Protection Act	Nonqualified Deferred Inclusion
Employee Retirement Income Security Act of 1974 (ERISA)	Occupational Safety Construction and General Industry Standards
Environment Health Program Area: Chemical Facility Anti-Terrorism (CFATS)	Occupational Safety and Health Act of 1970
Environment Health Program Area: Greenhouse Gas Reporting	PCI-DSS Compliance
Environment Health Program Area: Radiation (Ionizing, Non-Ionizing)	Pregnancy Discrimination Act of 1978 (Amendment to the Civil Rights Act of 1964)
Equal Employment of Veterans	Protection of Human Subjects Regulations / Common Rule
Equal Employment Opportunity	Public Health Security and Bioterrorism Preparedness and Response Act (Select Agents).
Equal Pay Act of 1963	Public Health Service Policies on Research Misconduct
Equity in Athletics Disclosure Act (EADA)	Qualified Pensions
Export Administration Act of 1979	Qualified Tuition Reductions
Fair and Accurate Credit Transaction Act (FACTA)	Rehabilitation Act of 1975 Section 503
Fair Credit Reporting Act (FCRA)	Rehabilitation Act of 1975 Section 504
Fair Debt Collection Practices Act (FDCPA)	Scholarships, Fellowship Grants and Other Grants
Fair Labor Standards Act (FLSA)	Select Agents and Toxins
False Claims Act	Small Unmanned Aircraft Systems (FAA)
Family Educational Rights and Privacy Act (FERPA)	Social Security Act
Federal Acquisition Regulations	State Authorization Reciprocity Agreement (SARA)
Federal Awardee Performance and Integrity Information System (FAPIIS)	Student Aid Internet Gateway (SAIG) Enrollment Agreement
Federal Funding Accountability and Transparency Act of 2006 (FFATA)	The Equal Pay Act of 1963
Federal Insurance Contributions Act (FICA)	The Family and Medical Leave Act of 1993
Federal Supplemental Educational Opportunity Grants (FSEOGs), Pell Grants, Perkins Loans, Federal Work Study Program, Federal Direct Loan Program	Title IX of the Education Amendment of 1972
Federal Unemployment Tax Act	Title VI of the Civil Rights Act of 1964
Federal Volunteer Protection Act	Toxic substances control act (TSCA)
Food and Drug Administration (FDA) Amendments Act of 2007	Trading with the Enemy Act
Foreign Influence in University Research: FY19 National Defense Authorization Act; Oct 2019 DoD Letter; The National Defense Authorization Act (NOAA) for FY 2019, Section 1286, pages 443- 445; and, Higher Education Act Section 117 Foreign Gifts Reporting	Treasury Department: Office of Foreign Assets Control (OFAC) and the Federal Acquisition Regulation Final Rule on Employment Eligibility Verification
Fraud Enforcement and Recovery Act of 2009 (FERA)	U.S. Innovation and Competition Act
GDPR: General Data Protection Regulation (EU)	Uniformed Services Employment and Reemployment Rights Act (USERRA)
Genetic Information Non-Discrimination Act of 2008	Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA)
GLBA (Gramm-Leach-Bliley Act) Compliance: "Colleges and universities are deemed to be in compliance with the GLBA Privacy Rule if they are in compliance with the Family Educational Rights and Privacy Act (FERPA)."	Worker Adjustment and Retraining Notification Act (WARN)

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EXHIBIT B – Notable STATE Laws, Rules & Regulations Applicable to NAU

Title (Alpha Order)	
AZ Procurement Code Applicability	Payment of salaries; sick leave
Abortion at educational facility prohibited; exception	Postsecondary health sciences programs
Alien in-state student status	Presumptions relating to student status
Annual appropriation; enrollment audit; expenditure; balance; salaries	Prohibited financial assistance; report
Appropriations for university research infrastructure facilities; university transfers; annual report	Public Records
Arizona board of regents; committee on free expression; annual report; committee termination	Public records exemptions; confidential information; historical records; donor records
Arizona Pollutant Discharge Elimination System Program	Report; academic performance of high school graduates
Arizona Proposition 107 - Affirmative Action Amendment 2010	Revised Uniform Arbitration Act
Arizona teachers academy; tuition and fees scholarships; fund; annual report	Revised Uniform Athlete Agents Act: Civil remedies
Awarding of academic and vocational credits; policies; current and former military members	Revised Uniform Athlete Agents Act: Notice to educational institution
Biohazardous Medical Waste and Discarded Drugs	Revised Uniform Athlete Agents Act: Required form of contract
Board of regents and university scholarships; notification requirements	Revised Uniform Athlete Agents Act: Student athlete's right to cancel contract
Clinical rotations	Rights of students at universities and community colleges
College course materials; information	Risk Management
Concurrent enrollment; nonresident tuition	Risk Management: Insurance; Uninsured Losses
Conflicts of Interest	Rural health professions program
Contract lobbyist; prohibition	Scholarships and financial aid provisions
Control of vehicles and nonpedestrian devices on university property; sanctions; compliance w\emissions inspection	Selective service registration; applicability
Correspondence and extension courses	Special admission of students under age eighteen; enrollment information; reports
Department of Transportation: Penalties and Violations	State universities; location; faculty powers; report
Deposits of universities monies to be secured; exception	Student identification cards; suicide prevention; contact information required
Emergency Planning and Community Right to Know Act	Student organizations; recognition; rights
Enforcement of contract	Student status guidelines
Environment Health Program Area: Air	Students' right to speak in a public forum; protests and demonstrations; invited speakers; court actions
Faculty employment decisions; religious and political beliefs	Suicide prevention training programs; requirements
Fingerprinting academic and nonacademic personnel; civil immunity	Teacher training schools
Free expression policy; rules; Arizona board of regents; community college district governing boards; requirements	Transfer articulation; course numbering; reports
Free speech; prohibition	Transfer of fees for student organizations; prohibition; support
Gift or loan of credit; subsidies; stock ownership; joint ownership	Transfer of technology developed by universities; intellectual property policies
Hazardous Waste	Tuition waiver scholarships; persons in foster care; requirements
Health professions field scholarships; purpose; amount; repayment	Unauthorized Obligations
Identification numbers; social security numbers	Underground Storage Tanks
Information on free expression; freshman orientation programs	University infrastructure capital financing; capital infrastructure funds; appropriations; uses; review
Information on persons who have completed vocational programs	University property of expelled students; classification
Inspection and audit of contract provisions	University recruitment & retention program for economically disadvantaged, minority and underrepresented student populations
In-state student status	Use of university resources or employees to influence elections; prohibition; civil penalty
Medical marijuana; school campuses; prohibition	Voting information; postsecondary students
Medical programs; students; required opioid-related clinical education	Water Quality Control: Local Water Pretreatment

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EXHIBIT C

In a business environment where reputational threats lurk around every corner, a strong culture of ethics and compliance is the foundation of a robust risk management program. The lessons learned related to scandals and organizational crises that trace back to the early 2000s make one thing clear: without an ethical and compliant culture, organizations will always be at risk. In fact, more and more, culture is moving from a lofty, "squishy" concept to something that should be defined, measured, and improved (see figure 1).

Figure 1: Culture is the foundation

The Deloitte Ethics and Compliance Framework recognizes that an ethical and compliant culture is the core element of an organization's ethics and compliance program. If the culture of the organization does not support principled performance, then all of the people, processes, and technologies that are put in place to mitigate ethics and compliance risks are suboptimized.

Culture is one of the biggest determinants of how employees behave. Strong cultures have two common elements: there is a high level of agreement about what is valued, and a high level of intensity regarding those values. Of course, not all cultures encourage good or ethical behaviors. When it comes to developing world-class ethics and compliance programs, the starting point is a positive culture of integrity.

"Culture helps people understand what is expected of them and how they need to behave. When the organizational culture embraces integrity, people know that integrity needs to characterize their actions."

Because the array of potential compliance risks facing an organization is typically very complex, any robust assessment should employ both a framework and methodology. The framework lays out the organization's compliance risk landscape and organizes it into risk domains, while the methodology contemplates both objective and subjective ways to assess those risks.

The framework needs to be comprehensive, dynamic, and customizable, allowing the organization to identify and assess the categories of compliance risk to which it may be exposed (see figure 2). Some compliance risks are specific to an industry or organization—for example, worker safety regulations for manufacturers or rules governing the behavior of sales representatives in the pharmaceutical industry. Other compliance risks transcend industries or geographies, such as conflicts of interest, harassment, privacy, and document retention.

An effective framework may also outline and organize the elements of an effective risk mitigation strategy that can be applied to each compliance risk domain.

Figure 2: Enterprise ethics and compliance program and risk exposure framework: An illustrative example

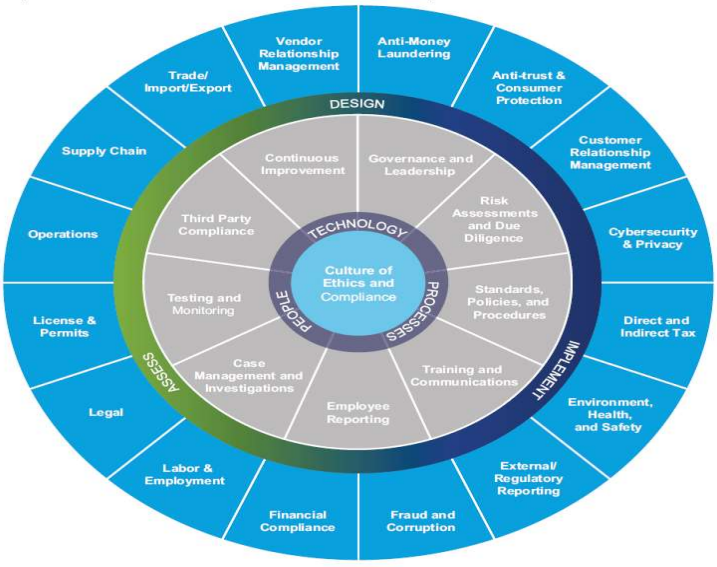

EXHIBIT D

7 Elements of an Effective Compliance & Ethics Program

These 7 elements are identified in the US Sentencing Guidelines as essential to an effective compliance and ethics program. Use them as a road map to establishing and maintaining compliance and ethics at your organization.

01 Standards of conduct, policies, and procedures
Put these policies in writing and use them as the foundation for your entire program.

02 Compliance officer and committee
Delegate an individual or group with operational responsibility, autonomy, and authority.

03 Communication and education
Create effective, ongoing training methods and establish open lines of communication.

04 Internal monitoring and auditing
Use internal tools to evaluate program effectiveness and detect criminal conduct.

05 Reporting and investigating
Encourage employees to raise concerns and have investigative procedures in place.

06 Enforcement and discipline
Establish appropriate incentives for compliance and disciplinary actions for violations.

07 Response and prevention
Resolve identified problems promptly and add related issues to monitoring activities.

CORPORATE COMPLIANCE & ETHICS WEEK

Learn more about the 7 elements of compliance and more in SCCE's *Compliance 101, second edition.* Order online at corporatecompliance.org/books