

New DOJ Policy For Compliance Officer Certification Now In Effect

Remember to register for the complimentary SAI Global Webinar on [“Evidencing Compliance Program Effectiveness,”](#) which will be held on August 16, 2022, at 2 PM Eastern.

Key Points:

- DOJ settlements to mandate Compliance Officers certify their organization’s compliance
- This is intended to empower and increase Compliance Officer’s stature and authority
- Compliance Officers could face personal criminal liability for falsely certifying

An organization that is the subject of a Department of Justice (DOJ) enforcement action may have a new compliance certification requirement for the Chief Compliance Officer (CCO) included in its settlement agreement. This [new policy](#) that has been mentioned for several months would require the CCO to certify that the organization’s compliance program is reasonably designed and implemented to help detect and prevent violations. The CCO could potentially face individual criminal liability under federal statutes that criminalize any false statements when making the certification. This has now been applied in the [Glencore International](#) settlement that requires both the CEO and CCO to submit certifications to the DOJ that the company has met its compliance obligations under the agreement. The certification includes statements that the compliance program is “reasonably designed to detect and prevent violations of relevant law or laws at issue in the particular case.”

The DOJ noted these new provisions were not intended to be punitive but to ensure the CCO is empowered with appropriate stature, independence, and authority in corporate decision-making to keep the organization properly focused on its ethics and compliance program. It is unlikely that a CCO would be held personally liable for false certification statements unless the CCO is knowingly misrepresenting or breaching the corporation’s obligations under the agreement. However, these certification requirements could have the chilling effect of CCOs leaving the

organization when a DOJ settlement is likely rather than face personal liability when the settlement is put in place. These requirements may also discourage people from assuming compliance positions with organizations under such settlement agreements.

For more information on this topic, contact Richard Kusserow at rkusserow@strategicm.com.

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