

30 Years of the U.S. Sentencing Commission

Compliance Program Guidelines

Richard P. Kusserow | December 2022

Be sure to complete the [2023 Healthcare Compliance Benchmark Survey](#).

Key Points:

- **Guidelines were the basis for the OIG Compliance Program Guidance**
- **Guidelines caused exponential growth of Compliance Officers (300,000 nationwide)**
- **Costs to support compliance programs total hundreds of billions of dollars**

The United States Sentencing Commission (“Commission”) issued a [report](#) summarizing their thirty years since promulgating the Organizational Sentencing Guidelines (“Guidelines”) as the framework for compliance programs. The Commission was created by the Sentencing Reform Act of 1984 to establish guidelines to eliminate unwarranted disparities in sentencing and to address the inequalities created by unfettered sentencing discretion. The Guidelines were to be “designed so that the sanctions imposed upon organizations and their agents, taken together, will provide just punishment, adequate deterrence, and incentives for organizations to maintain internal mechanisms for preventing, detecting, and reporting criminal conduct.” Development of the Guidelines was a collaborative process involving federal agencies, businesses, industry advocacy groups, academia, among others.

As the Department of Health and Human Services (“DHHS”) Inspector General, I was intimately involved with the Commissioners in presenting the DHHS perspective. The Guidelines explicitly require that organizations have an effective compliance and ethics program to promote an organizational culture that “encourages ethical conduct and a commitment to compliance with the law.” An organization with an effective compliance and ethics program would receive a culpability score reduction, thereby lowering its fine range.

The DHHS OIG used the Guidelines as a model for the development of their own compliance program guidance for various healthcare sectors. The DOJ’s “Evaluation of Corporate Compliance Programs” provides guidance based upon the Guidelines to assist prosecutors in making informed decisions about the effectiveness of a compliance program.

The Guidelines have been used in sentencing decisions for over 5,000 organizational offenders with the courts imposing nearly \$33 billion in fines on organizational offenders. Six out of ten offenders sentenced under the guidelines received a culpability score that increased the levels of penalty. Only 11 of the 5,000 cases received a culpability score reduction for having an effective compliance and ethics program. In 20 percent of the cases, organizations were ordered to develop effective compliance programs. Seven out of ten cases involved organizational offenders with fewer than 50 employees. In most cases, individuals were charged along with their organization. Nine out of ten organizational offenders did not evidence an effective compliance, but the Commission noted there has been a steady increase of organizations with compliance programs where today six out of ten organizations report having a compliance program. Federal Judges also frequently included the creation of an effective compliance program in their mandates.

Since the promulgation of the Guidelines, the compliance profession has grown exponentially where there are now over 300,000 compliance Offices. It is estimated that the direct costs to support compliance programs are routinely in the hundreds of billions of dollars.

Register now for the SAI Global-sponsored complimentary webinar “[Compliance Leadership: Essential Habits, Skills, and Traits for Success](#),” to be held Thursday, January 31, 2023, at 1:00 Eastern.

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About the Author

Richard P. Kusserow established Strategic Management Services, LLC, after retiring from being the DHHS Inspector General, and has assisted over 2,000 health care organizations and entities in developing, implementing and assessing compliance programs.