

SCCE Compliance 101 Third Edition Chapter 1. Compliance Programs: History and Benefits

Many rules and regulations, along with their enforcement, have shaped compliance programs over the years. Regulations and compliance challenges often emerge as a response to different events going on in the nation, such as the COVID-19 pandemic that began in 2020.

The many compliance challenges throughout 2020 and 2021 included: temporary changes in regulations to support patient and consumer healthcare; issues with fraud related to supplies; price gouging; increased information security events; fraud schemes around vaccines, testing for COVID-19, and home remedies purported to be a “cure” for the virus; privacy events; issues around security and confidentiality with remote workers; and physical and property safety issues (i.e., vacant real estate and demonstrations around diversity, inclusion, and equity).

Over the years, we have seen responses from regulators that are specific to national events, such as the case with Enron, where regulators emphasized governing authority, accountability, and transparency. These changes are evident in the Sarbanes-Oxley Act of 2002 and the focused amendment in the 2004 U.S. Federal Sentencing Guidelines (FSG). As these types of responses are seen, compliance programs must adapt accordingly.

Historically, some of the first regulations date back to the 1800s. The False Claims Act (FCA) was enacted in 1863 and amended several times, the latest amendment being in 2010. The act was originally passed by Congress because the Union Army was being defrauded by suppliers of goods during the American Civil War. The FCA imposes liability on persons and companies that defraud governmental programs. The qui tam provision permits citizens unaffiliated with the government to file actions on behalf of the government (called “whistleblowing”); and those whistleblowers can receive up to 30% of any recovered damages. In the past several years other regulators have joined the focus on enforcement of key rules and regulations.

Events in the 1970s to early 1980s led to one of the most important pieces of government guidance for compliance programs. At that time, the U.S. Department of Defense (DOD) was paying exorbitantly high prices for supplies. News stories (and late-night talk show jokes) reported on the outrageous prices—\$435 hammers and \$640 toilet seats. June Gibbs Brown was the Inspector General (IG) for the DOD at that time. Under her influence, defense industry suppliers developed voluntary self-regulatory guidelines—the Defense Industry Initiative—designed to help eliminate waste and bring prices into line.^[1] Contract compliance currently remains a strong focus and expectation for all businesses providing services to the federal government.

The U.S. Federal Sentencing Guidelines (FSG) was developed in 1991 by the United States Sentencing Commission. Chapter eight of the FSG focuses on compliance programs for organizations.^[2] It was the first time in history that government guidance was developed to cross all industries and provide the essential elements for compliance program development. The FSG has since become the basic infrastructure for compliance programs worldwide. Many rules and regulations have evolved from this guidance and have included mandates regarding FSG elements, i.e., Federal Acquisition Regulation (reporting, communication, and compliance sections). These basic elements of a compliance program are further discussed in the chapters of this book.

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