

Corporate Compliance Programs and U.S. Department of Justice Enforcement Policies

► SUMMARY FINDINGS



ABOUT THE ETHICS & COMPLIANCE INITIATIVE

The Ethics & Compliance Initiative (ECI™) has a mission to empower individuals and organizations to build and sustain high-quality ethics & compliance programs. Established in 1922, the Ethics & Compliance Initiative™ (ECI™) comprises the two oldest nonprofits in the ethics & compliance industry; the Ethics Resource Center® (d.b.a. the Ethics Research Center) and the Ethics & Compliance Officer Association (d.b.a. the Ethics & Compliance Association).

Through its research, ECI identifies the practices that improve ethics & compliance program effectiveness and build institutional culture strength. As an association, ECI brings together ethics & compliance professionals and academics from all over the world to share techniques, resources and exciting new ideas. ECI also has an established track record of providing support to organizations seeking to transform their cultures, often in the wake of significant challenges with noncompliance.

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SUMMARY FINDINGS

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Introduction

The U.S. Department of Justice (DOJ) publishes guidelines for organizations operating in the U.S. upon which corporate compliance programs are measured and against which organizations should be investigated for wrongdoing. The findings discussed in this summary are based on ECI's Corporate Compliance Program and DOJ Enforcement Policies Survey ("survey") which was designed to obtain ethics & compliance leaders' opinions about the DOJ's enforcement guidelines and their intersection with corporate compliance programs. ECI surveyed chief ethics & compliance officers, chief compliance officers and chief ethics officers or their equivalents (ethics & compliance leaders).

A key objective was to gather information that would help provide guidance to organizations and DOJ on actions that would improve compliance and enforcement efforts. Each section of this summary report discusses key findings on the guidance documents and other pertinent content from the survey.

When reading this report, please keep in mind that the survey was conducted prior to the October 28, 2021 DOJ memorandum making revisions to the department's existing corporate criminal enforcement policies and practices.¹ DOJ will consider an organization's entire criminal history, require that organizations provide information on "all persons involved in corporate misconduct," and commit to imposing monitors where appropriate.²

ECI wishes to thank the following for their support in promoting the survey to their stakeholders:



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¹ Monaco, L.M. (2021, October 28). Corporate Crime Advisory Group and Initial Revisions to Corporate Criminal Enforcement Policies [Memorandum]. Department of Justice. <https://www.justice.gov/dag/page/file/1445106/download>

² (Monaco, 2021)



Survey Background

SURVEY FRAMEWORK

The Corporate Compliance Program (CCP) and DOJ Enforcement Policies Survey focused on four primary policies or guidance documents (resources).¹ The survey contained sections that asked about:

- 1 “Evaluation of Corporate Compliance Programs,”** updated June 2020 (CCP evaluation guidance). DOJ’s guidance is intended to assist prosecutors in determining whether to bring charges and/or negotiate a plea agreement based in part on the extent to which a corporation’s compliance program was effective at the time of an offense and is effective at the time of a charging decision or resolution.
- 2 “Guidelines for Taking Disclosure, Cooperation, and Remediation into Account in False Claims Act Matters”** (FCA-related policies), issued March 2019. The DOJ issued policies establishing how defendants in False Claims Act (FCA) matters can earn credit for voluntary self-disclosure, cooperation and remediation. These policies are contained in DOJ’s *Justice Manual*, Section 4-4.112.
- 3 “Resource Guide to the U.S. Foreign Corrupt Practices Act,”** 2nd edition, July 2020. The DOJ’s/SEC’s guide discusses the FCPA Corporate Enforcement Policy (CEP), Section 9-47.120, contained in the *Justice Manual* (CEP as explained in the FCPA resources guide), which applies a presumption that DOJ will decline prosecution of a company where a company voluntarily self-discloses misconduct, fully cooperates and appropriately remediates, absent aggravating circumstances. The DOJ has indicated that it will apply the CEP to criminal matters outside the context of the FCPA.
- 4 “Evaluation of Corporate Compliance Programs in Criminal Antitrust Investigations,”** issued July 2019 (antitrust compliance program guidance). DOJ’s Antitrust Division issued guidance intended to assist prosecutors in determining whether to bring charges and/or negotiate a plea agreement based on the extent to which a corporation’s antitrust compliance program was effective at the time of an offense and is effective at the time of a charging decision or resolution.
- 5 Incentivizing Compliance,** a final section of the survey asked about awareness of DOJ enforcement activities and incentivizing effective programs and compliance in organizations.

¹ Screening questions preceded sections 2, 3 and 4 and asked participants if each of the resources/topics were applicable to their organization. Participants who responded “yes” received questions about that topic. Participants who responded “no” were skipped forward to the next section and its screening question. All participants received the questions in sections 1 and 5.



AREAS OF INQUIRY

Survey participants were asked about:

- Familiarity with each of the enforcement resources.
- Helpfulness of the resources.
- Their organization's use of the resources.
- Impact in the organization of the resources on:
 - Reinforcing the importance of compliance.
 - Building an ethical culture.
 - Revising the program to be more effective (or reasons for not making revisions).
 - Self-disclosure, cooperation and remediation.

And about:

- Actions that could help to increase the attention that organizations give to compliance programs.
- Sources of information about enforcement.
- Level of compliance risk that the areas of focus (FCA, FCPA and antitrust) present to their organization.
- Reforms that would incentivize improved corporate compliance programs.
- Other sources of guidance, regulatory frameworks and regulations that influence their organization's program.
- DOJ enforcement priorities.
- Actions DOJ could take that could help increase the understanding and implementation of the expectations set forth in each of the enforcement resources.

Note: Some survey questions were "select all that apply" type questions. Responses to these questions are independent from one another and do not add up to 100%. These questions are identified in the report.

Note: Some results for questions related to FCA-related policies are of a subset of industries (medical, defense, construction, education, finance and technology) that are highly likely to be regulated on FCA-related issues compared with other industries that are moderately or not highly likely to be regulated by FCA-related policies. These questions are identified in the report.



METHODOLOGY

The survey was conducted online, accessible through:

- Unique invitation links sent to qualifying individuals.
- An anonymous link posted on ECI's and partner organizations' platforms and websites.

Data collection took place from May through June 2021.

PARTICIPANTS

248 chief ethics & compliance officers (CECOs), chief compliance officers (CCOs) and chief ethics officers (CEOs) or their equivalents participated in the survey.

The unique survey invitation links were sent to individuals pre-qualified by their job title. Individuals who accessed the survey via the anonymous link were admitted to the survey according to their positive response to a screening question identifying them as a CECO, CCO or CEO.

Participants worked in organizations:

- Ranging from fewer than 25 employees to over 90,000 employees. The plurality came from organizations employing 5,000 to 10,000 people.
- From around the world. Organizations either had operations in only one country or were multinationals.
- From a mix of industries ranging from services to manufacturing.



Survey Findings

Key Comparative Findings

Ethics & Compliance Leaders¹ Are Most Likely to Be Familiar² with the Corporate Compliance Program (CCP) Evaluation Guidance

Factors Influencing Familiarity with Resources

Industry: In aggregate, ethics & compliance leaders working in the **medical, defense, construction, education, finance and technology industries*** are 30% more likely to be familiar with the **FCA³-related policies** compared with ethics & compliance leaders working in other industries (63% vs. 48%).

Breadth of operations: Ethics & compliance leaders working in organizations with **operations in more than one country** are 80% more likely to be familiar with the **CEP⁴ as explained in the FCPA⁵ resources guide** compared with ethics & compliance leaders working in organizations with operations in only one country (90% vs. 50%).

Ethics & compliance leaders working in **organizations with operations in more than one country** are 29% more likely to be familiar with the **antitrust compliance program guidance** compared with ethics & compliance leaders working in organizations with operations in only one country (73% vs. 57%).

Level of risk: Ethics & compliance leaders working in organizations for which **FCPA compliance is a key risk area** are 73% more likely to be familiar with the **CEP as explained in the FCPA resources guide** compared with ethics & compliance leaders working in organizations for which FCPA compliance is not a key risk area (91% vs. 53%).

*These results are of the subset of identified industries.

¹ Chief ethics & compliance officers, chief compliance officers and chief ethics officers or their equivalents (ethics & compliance leaders).

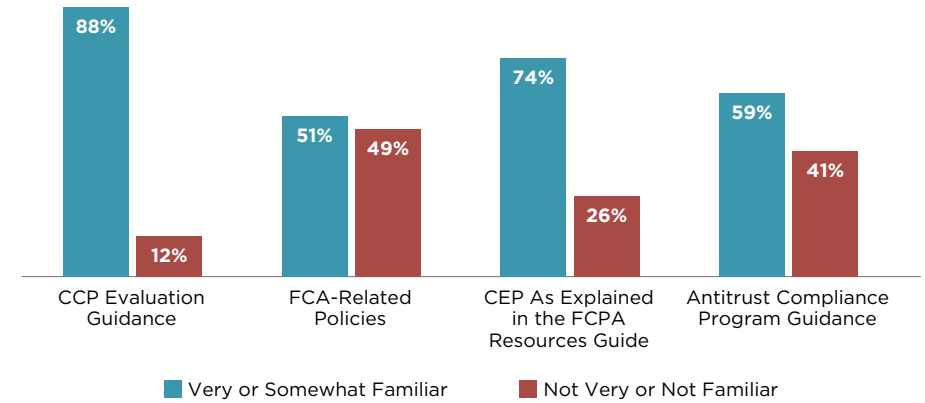
² Throughout this report, “familiar” represents “very familiar” and “somewhat familiar” responses.

³ False Claims Act.

⁴ Corporate Enforcement Policy.

⁵ Foreign Corrupt Practices Act.

Familiarity with Resources



Helpfulness of Resources

Majorities of ethics & compliance leaders find the resources helpful in understanding DOJ's criteria used:

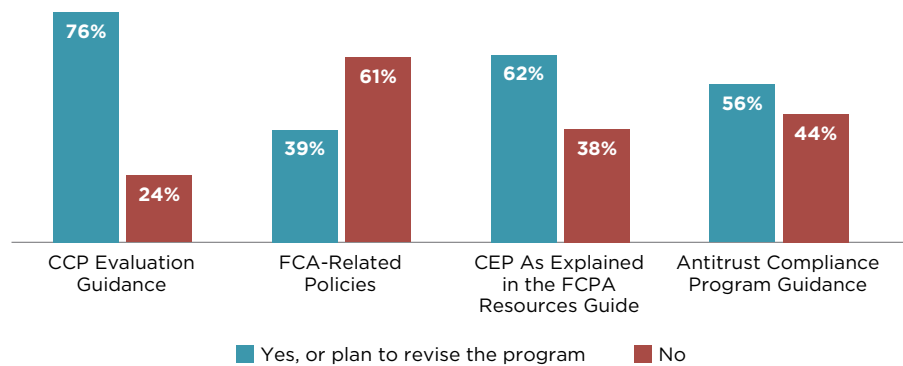
- To evaluate their corporate program.
- To determine credit for self-disclosure, cooperation and remediation.

Applying the Resources

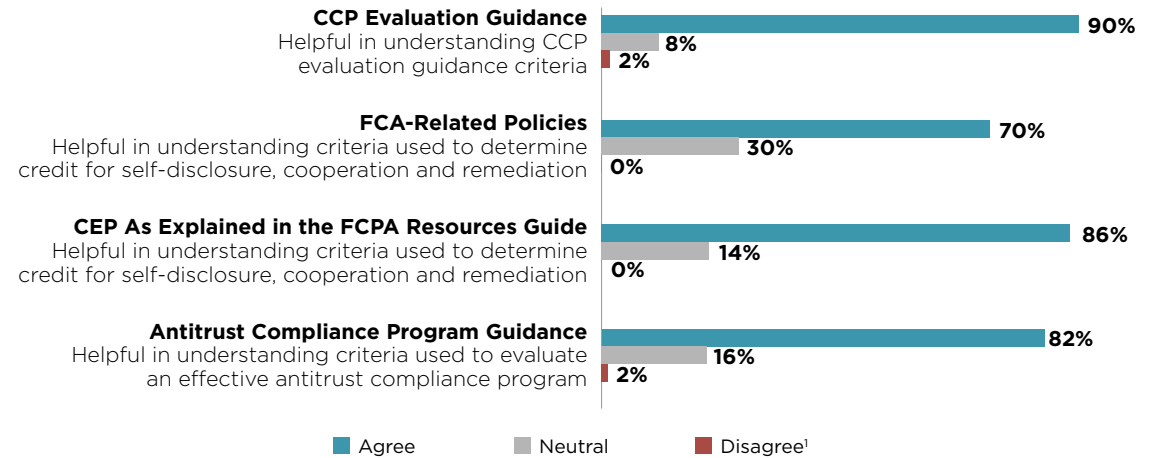
In response to three of the resources, the majority of organizations revised or plan to revise their program.

Organizations are less likely to revise their program in response to the FCA-related policies. Of the organizations that did not revise their program, the primary reason for not revising their program was the belief that the program was already sufficiently designed (64%).

Revised the Program in Response to the Resource



Helpfulness of the Policies and Documents



Organizations that find the resources helpful are more likely to:

- ▲ Reference the resources with other individuals or groups in their organization to reinforce the importance of a program in their organization.
- ▲ Reference the resources to reinforce culture building within their organization.

¹ Throughout this report, "agree" represents "strongly agree" and "agree" responses; "Disagree" represents "disagree" and "strongly disagree" responses.

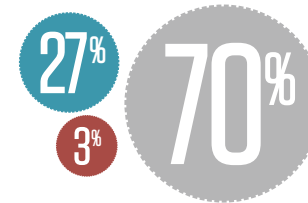
Perceptions About DOJ Declining Prosecution, Negotiating Plea Agreements and Awarding Credit

The majority of ethics & compliance leaders are unsure if DOJ is declining prosecution or awarding credit for actions taken in response to the resources.

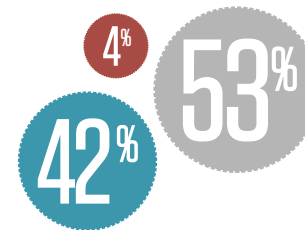
DOJ is consistently declining prosecution and/or negotiating plea agreements for companies that respond effectively to the criteria set forth in the CCP evaluation guidance.



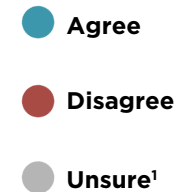
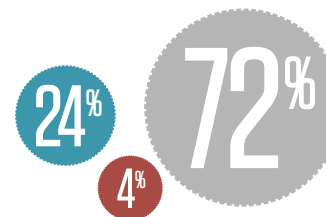
DOJ is consistently awarding credit for self-disclosure, cooperation and remediation of a claim, pursuant to the FCA-related policies.



DOJ is consistently awarding credit for self-disclosure, cooperation and remediation of violations, pursuant to the CEP as explained in the FCPA resources guide.



DOJ is consistently declining prosecution and/or negotiating plea agreements for antitrust violations pursuant to the antitrust compliance program guidance.



¹ "Unsure" represents "neutral" and "don't know" responses.

Note: Percentages may not add to 100% due to rounding.

Consistently Awarding Credit Is Associated with an Increased Likelihood of Disclosure and Cooperation.

Compared with the time before the resource was issued, organizations that believe that DOJ is consistently awarding credit for self-disclosure, cooperation and remediation of a claim (pursuant to the FCA-related policies) or a violation (pursuant to the CEP as explained in the FCPA resources guide) are now more likely to self-disclose, cooperate and remediate a claim or violation voluntarily.

Ethics & Compliance Leaders' (Respondents) Suggestions Toward Incentivizing an Effective Compliance Program

Respondents suggested several ways that DOJ could help incentivize organizations to increase their attention to compliance programs, including:

- Publicize more details regarding enforcement information.
- Continue improving documents.
- Increase efforts to engage senior business leaders.
- Increase engagement with organizations.
- Develop and use new ways to communicate enforcement information.
- Provide additional guidance around employee responsibilities, activities and relationships.

Areas for Further Study

The survey results revealed unexplained findings related to the FCA-related policies that could merit further inquiry by DOJ or others. Compared with results for other topics covered in the survey, respondents were generally, for example, less likely:

- To be familiar with the policies.
- To revise their organization's program in response to the policies.
- To find the policies helpful.
- To reference the policies in their organizations.

The recent DOJ memorandum¹ will likely affect organizations' work on effective compliance programs and responses to violations. Monitoring the impact of the policies in the memorandum will reveal whether the new policies have a salutary, neutral or negative impact. For example, potential consequences might be that:

Positive: Organizations intensify efforts to build an effective program to offset the increased scrutiny of their history and individuals in and associated with the organization.

Negative: Organizations become less likely to self-disclose and cooperate if it becomes apparent that the history of events in an organization prefigures a low likelihood of receiving credit for their efforts.

The data in this report suggest organizations are seeking greater cooperation with DOJ on program building and disclosure. Further inquiry could reveal whether organizations consider the policies to be encouraging (carrots), punitive (sticks) or a mix of the two approaches.

¹ (Monaco, 2021)

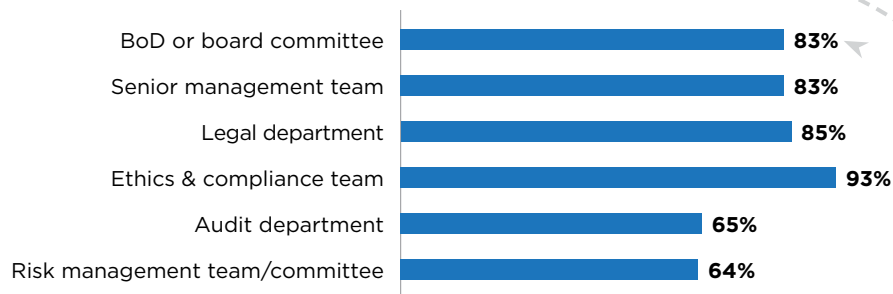


1 “Evaluation of Corporate Compliance Programs” Updated June 2020

Over 80% of Organizations Briefed¹ Their Board, Senior Management Team, Legal Department and E&C Team on the CCP Evaluation Guidance

93% of organizations briefed their E&C team.

Provided briefing on the CCP evaluation guidance to:



Organizations that did not brief their board indicated that no briefing was required for them because:²

- Their program is already sufficiently designed **52%**
- The update is not sufficiently new..... **42%**
- The guidance is not sufficiently material..... **39%**

In general, the primary reasons for not requiring a briefing for the groups are the beliefs that:

- The program is already sufficiently designed.
- The CCP evaluation guidance is not sufficiently material information.
- The update is not sufficiently new.

¹ “Briefed” represents “yes” and “no, but plan to” responses.

² “Select all that apply” type question.



Referencing the CCP Evaluation Guidance

Nearly All Organizations Use the CCP Evaluation Guidance to Reinforce Ethics & Compliance in Their Organization.

In response to the CCP evaluation guidance:

92% of organizations referenced or plan to reference the CCP evaluation guidance with individuals or groups in their organization to reinforce the importance of a program in their organization.

90% of organizations referenced or plan to reference the CCP evaluation guidance to reinforce culture building within their organization.

Revising the Compliance Program in Response to the CCP Evaluation Guidance

76% of organizations revised or plan to revise their compliance program in response to the evaluation guidance.

24% of organizations did not revise their program, because:¹

- Their program is already sufficiently designed..... **72%**
- The update is not sufficiently new **47%**
- The guidance is not material..... **9%**

80% of organizations agreed that the CCP evaluation guidance was helpful in setting priorities for their organization's compliance program.

¹ "Select all that apply" type question.

² Revisions appear more likely to be made to elements characterized as "operational" versus "structural." For example, training continually responds to changing needs and internal and external conditions; while the steps comprising merger and acquisition procedures are reusable and it would be detrimental to create and follow different procedures with each merger or acquisition.

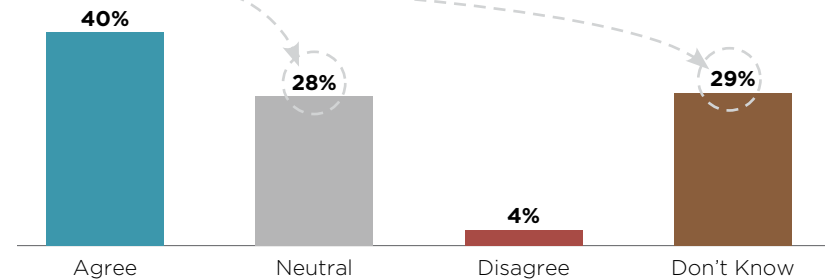
³ "Unsure" represents "neutral" and "don't know" responses.



Organizations were most likely to revise or were planning to revise employee training and least likely to revise E&C authority and related controls.²

PROGRAM REVISIONS IN RESPONSE TO THE CCP EVALUATION GUIDANCE ¹	
Most Likely to Be Revised	Least Likely to Be Revised
Employee training..... 62%	Compliance resources or staffing..... 28%
Risk assessment procedures..... 58%	Gifts, travel, hospitality-related procedures..... 28%
Written compliance procedures..... 58%	Merger, acquisition, joint venture procedures..... 25%
Monitoring, auditing and/or testing... 54%	E&C authority and related controls... 25%

57% of organizations are unsure³ whether the DOJ is declining prosecution or negotiating plea agreements based on the criteria stated in the CCP evaluation guidance.



Respondents' Suggestions Toward Building an Effective Compliance Program

Respondents suggested several ways that DOJ could help them understand and implement expectations regarding an effective compliance program, for example:

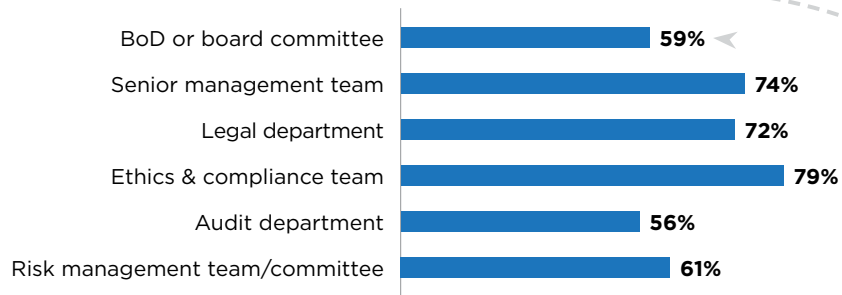
- Be consistent in content and application of guidance and policies across different governmental regulatory agencies.
- Provide illustrative specifics; for example, best practices and metrics to help measure success.
- Provide evidence of DOJ's efforts that recognize and accommodate organizations' unique characteristics and conditions when making enforcement determinations.

2 “Guidelines for Taking Disclosure, Cooperation, and Remediation Into Account in False Claims Act Matters”¹ Issued March 2019

Approximately 3/4 of Organizations Briefed² Their Senior Management Team, Legal Department and Ethics & Compliance Team on the FCA-related Policies

79% of organizations briefed their E&C team.

Provided briefing on the FCA-related policies to:



Organizations that did not brief their board indicated that no briefing was required for them because:³

- The guidance is not sufficiently material **38%**
- Their program is already sufficiently designed **38%**
- The organization is not at a heightened risk of an FCA violation **38%**

In general, the primary reasons for not requiring a briefing for the groups are the beliefs that:

- The program is already sufficiently designed.
- The groups are already sufficiently informed.
- The organization is not at a heightened risk of an FCA violation.

¹A screening question preceded questions in this section of the survey limiting respondents to those who indicated that their organization was subject to False Claims Act jurisdiction and enforcement. Participants to whom the FCA did not apply were skipped forward to the next section and its screening question.

²“Briefed” represents “yes” and “no, but plan to” responses.

³“Select all that apply” type question.



Referencing the FCA-Related Policies

Almost 3/4 of Organizations Use the FCA-Related Policies to Reinforce Ethics & Compliance in Their Organization.

In response to the FCA-related policies:

73% of organizations referenced or plan to reference the FCA-related policies with individuals or groups in their organization to reinforce the importance of a program in their organization.

69% of organizations referenced or plan to reference the FCA-related policies to reinforce culture building within their organization.

Revising the Compliance Program in Response to the FCA-Related Policies

39% of organizations revised or plan to revise their program in response to the FCA-related policies.

61% of organizations did not revise their program, because:¹

- Their program is already sufficiently designed **64%**
- The guidance is not material **19%**
- The organization is not at risk of an FCA violation **9%**

Effects of the FCA-Related Policies on Disclosure

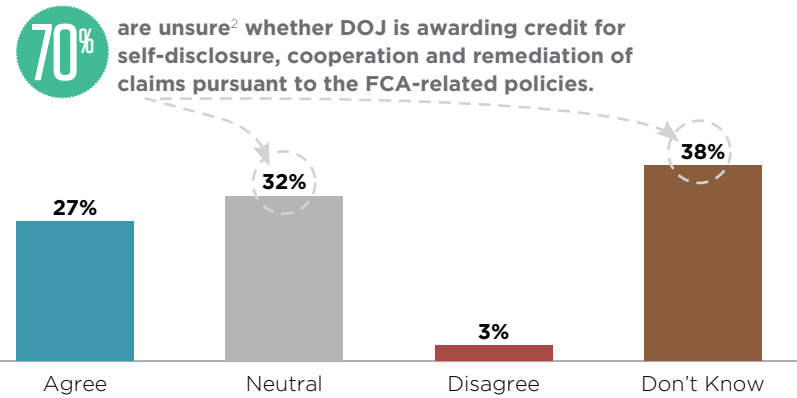
57% of organizations agreed that the FCA-related policies would make organizations more likely to disclose an FCA violation.

Compared with the time before the FCA-related policies were issued, organizations that believe that DOJ is consistently awarding credit for self-disclosure, cooperation and remediation of a claim, pursuant to the FCA-related policies, are now more likely to self-disclose, cooperate and remediate a claim voluntarily (13% vs. 9%).

¹“Select all that apply” type question.

² “Unsure” represents “neutral” and “don’t know” responses.

³ These industries are medical, defense, construction, education, finance and technology. These results are of this subset of industries.



Actions of Industries That Are More Likely to Be Regulated by FCA-Related Policies³

Compared with organizations in industries less likely to be subject to FCA-related regulation, organizations in industries more likely to be subject to FCA-related regulation (medical, defense, construction, education, finance and technology) are more likely to:

- Brief the board and other groups in their organization on the resource.
- Reference the FCA-related policies in documents, briefings, meetings, etc.
- Reference the FCA-related policies to reinforce the importance of building an ethical culture within their organization.

Respondents in industries more likely to be subject to FCA-related regulation are less likely to agree that DOJ is consistently awarding credit for self-disclosure, cooperation and remediation of a claim pursuant to the FCA-related policies, compared with organizations in industries less likely to be subject to FCA-related regulation (22% vs. 42%). These respondents are less likely to self-disclose, cooperate and remediate a claim compared with the period prior to the issuance of the FCA-related policies.

Respondents' Suggestions Toward Increasing Understanding of Enforcement Criteria, Pursuant to the FCA-Related Policies

Respondents had several suggestions that would make the FCA-related policies more helpful in understanding the criteria used to determine credit for self-disclosure, cooperation and remediation of a claim, including:

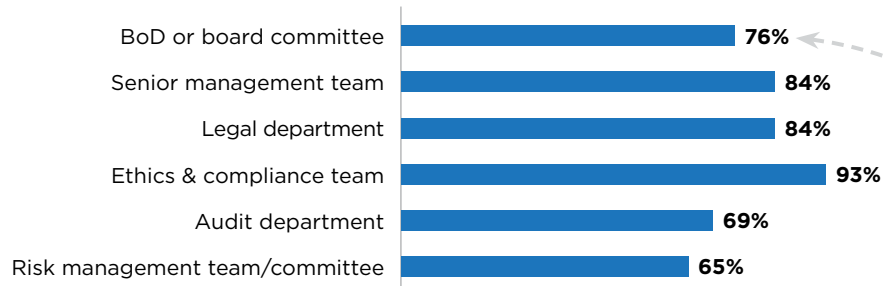
- Publicize information about the application of the policies and the impact of the compliance program.
- Be consistent in application of policies across different governmental regulatory agencies.
- Provide an executive summary of the FCA-related policies in simple language.

3 “Resource Guide to the U.S. Foreign Corrupt Practices Act,” 2nd Edition,¹ July 2020

Over 80% of Organizations Briefed² Their Senior Management Team, Legal Department and E&C Team on the CEP as Explained in the FCPA Resources Guide

93% of organizations briefed their E&C team.

Provided briefing on the CEP as explained in the FCPA resources guide to:



Organizations that did not brief their board indicated that no briefing was required for them because:³

- Their program is already sufficiently designed **55%**
- The update is not sufficiently new..... **50%**
- The group is already sufficiently informed..... **45%**

In general, the primary reasons for not requiring a briefing for the groups are the beliefs that:

- The program is already sufficiently designed.
- The CEP as explained in the FCPA resources guide is not sufficiently material information.
- The organization is not at a heightened risk of an FCPA violation.

¹A screening question preceded questions in this section of the survey limiting respondents to those who indicated that compliance with the FCPA was a key risk area in their organization. Participants to whom the FCPA did not apply were skipped forward to the next section and its screening question.

²“Briefed” represents “yes” and “no, but plan to” responses.

³“Select all that apply” type question.



Referencing the CEP As Explained in the FCPA Resources Guide

Over 3/4 of Organizations Use the CEP As Explained in the FCPA Resources Guide to Reinforce Ethics & Compliance in Their Organization.

In response to the CEP as explained in the FCPA resources guide:

83% of organizations referenced or plan to reference the CEP as explained in the FCPA resources guide with individuals or groups in their organization to reinforce the importance of a program in their organization.

77% of organizations referenced or plan to reference the CEP as explained in the FCPA resources guide to reinforce culture building within their organization.

Revising the Compliance Program in Response to the CEP As Explained in the FCPA Resources Guide

62% of organizations revised or plan to revise their program in response to the CEP as explained in the FCPA resources guide.

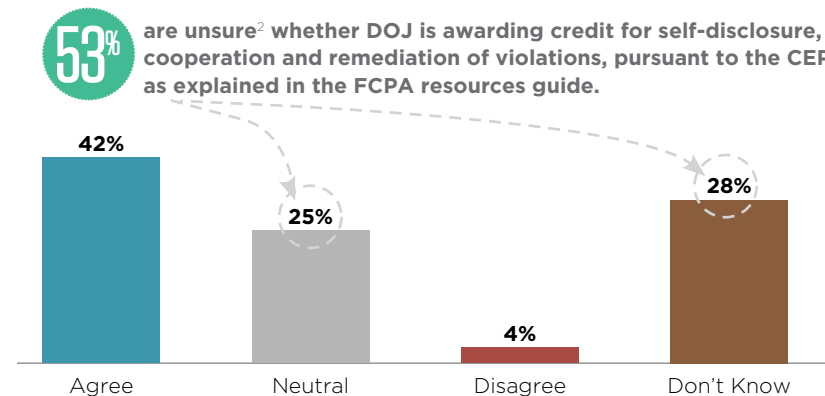
38% of organizations did not revise their program, because:¹

- Their program is already sufficiently designed **69%**
- The update is not sufficiently new **50%**
- The guidance is not material **19%**

Effects of the CEP As Explained in the FCPA Resources Guide on Disclosure

57% of organizations agreed that the CEP as explained in the FCPA resources guide would make organizations more likely to disclose an FCPA violation.

Consistently awarding credit is associated with an increased likelihood of disclosure and cooperation. Compared with the time before the CEP as explained in the FCPA resources guide was issued, organizations that believe DOJ is consistently awarding credit for self-disclosure, cooperation and remediation of a violation, pursuant to the CEP as explained in the FCPA resources guide, are now more likely to self-disclose, cooperate and remediate a violation voluntarily (11% vs. 8%).



Respondents' Suggestions Toward Increasing Understanding of Enforcement Criteria, Pursuant to the CEP As Explained in the FCPA Resources Guide

Respondents had several suggestions that would make the CEP as explained in the FCPA resources guide more helpful in understanding the criteria used to determine credit for self-disclosure, cooperation and remediation of a violation, including:

- Provide examples of and specifics about best practices.
- Be proactive in educating organizations about the resources guide.
- Provide an executive summary in simple language.

¹“Select all that apply” type question.

² “Unsure” represents “neutral” and “don't know” responses.

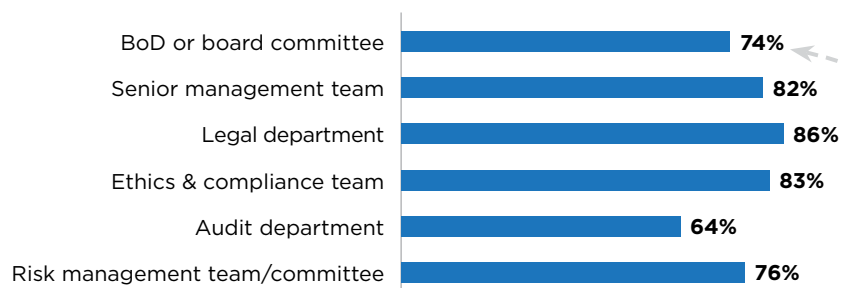


4 “Evaluation of Corporate Compliance Programs in Criminal Antitrust Investigation,”¹ Issued July 2019

Over 80% of Organizations Briefed² Their Senior Management Team, Legal Department and E&C Team on the Antitrust Compliance Program Guidance

83% of organizations briefed their E&C team.

Provided briefing on the antitrust compliance program guidance to:



Organizations that did not brief their board indicated that no briefing was required for them because:³

- The guidance is not sufficiently material..... **50%**
- The group is already sufficiently informed **40%**
- Their program is already sufficiently designed... **30%**

In general, the primary reasons for not requiring a briefing for the groups are the beliefs that:

- The groups are already sufficiently informed.
- The antitrust compliance program guidance is not sufficiently material information.
- The organization is not at a heightened risk of an antitrust violation.

¹A screening question preceded questions in this section of the survey limiting respondents to those who indicated that antitrust violations were a key risk area in their organization. Participants to whom this did not apply were skipped forward to the next section.

²“Briefed” represents “yes” and “no, but plan to” responses.

³“Select all that apply” type question.



Referencing the Antitrust Compliance Program Guidance

Over 2/3 of Organizations Use the Antitrust Compliance Program Guidance to Reinforce Ethics & Compliance in Their Organization.

In response to the antitrust compliance program guidance:

76% of organizations referenced or plan to reference the antitrust compliance program guidance with individuals or groups in their organization to reinforce the importance of antitrust compliance in their organization.

68% of organizations referenced or plan to reference the antitrust compliance program guidance to reinforce culture building within their organization.

Revising the Antitrust Compliance Program in Response to the Antitrust Compliance Program Guidance

56% of organizations revised or plan to revise their antitrust compliance program in response to the antitrust compliance program guidance.

44% of organizations did not revise their antitrust program, because:¹

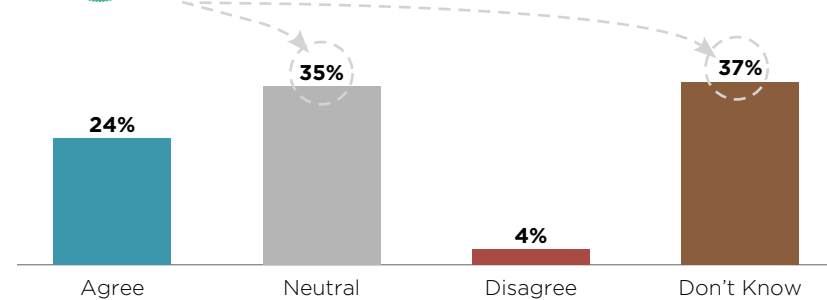
- Their program is already sufficiently designed..... **67%**
- The guidance is not material **17%**
- The organization is not at risk of an antitrust violation **11%**

68% of organizations agreed that the antitrust compliance program guidance was helpful in setting priorities for their organization's antitrust compliance program.

Effects of the Antitrust Compliance Program Guidance on Disclosure

48% of organizations agreed that the antitrust compliance program guidance would make organizations more likely to disclose an antitrust violation.

72% are unsure² whether DOJ is declining prosecution and/or negotiating plea agreements pursuant to the antitrust compliance program guidance.



Respondents' Suggestions Toward Building an Effective Antitrust Compliance Program and Increasing Understanding of the Criteria Used by DOJ When Making Decisions About Declinations

Respondents suggested that using plain, simple language would help them understand the criteria used to:

- Design and implement an effective antitrust compliance program.
- Make a determination to decline prosecution and/or to negotiate a plea agreement.

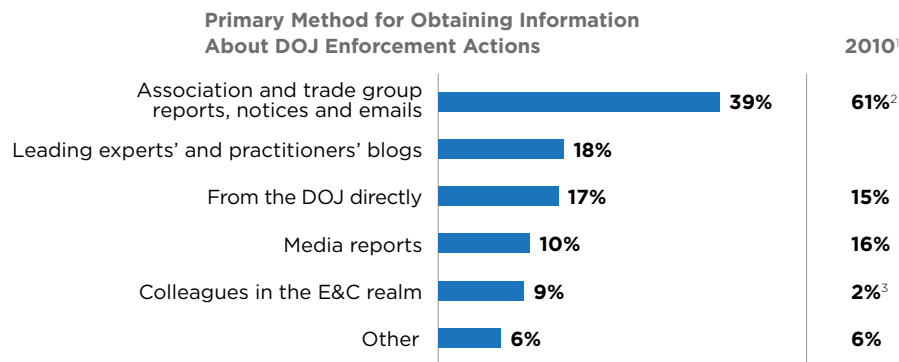
¹"Select all that apply" type question.

²"Unsure" represents "neutral" and "don't know" responses.

5 Incentivizing Compliance

In General, the Methods for Obtaining Information About DOJ Enforcement Actions Have Not Changed Substantially Since 2010

- Ethics & compliance leaders continue to be more than three times as likely to obtain information about DOJ enforcement actions from associations, trade groups and leading experts compared with obtaining information from DOJ directly (2021: 57% vs. 17%. 2010: 61% vs. 15%).
- Currently, 9% of ethics & compliance leaders obtain their information about DOJ enforcement actions from colleagues in the E&C realm compared with 2% obtaining that information from “other companies” in 2010.



Respondents cited other primary guidance documents and regulations (domestic and international) that influence the design and operation of their compliance program. For example:

- ▲ U.S. regulations (NHSTA, EPA, FERC, HHS, FDA, FAR, etc.).
- ▲ Multiple regulators and regulations enforced at the global, regional and local levels.
- ▲ E&C trade organizations, resources, vendors and blogs.
- ▲ Federal Sentencing Guidelines for Organizations (FSGO).
- ▲ U.K. Bribery Act.
- ▲ Outcomes of cases, settlements, corporate integrity agreements (CIAs), comments/letters by regulators.
- ▲ The OECD and other international organizations (e.g., COSO, ISO).

¹Results are from the 2010 Compliance & Ethics Professionals' Input to the Department of Justice Survey of CECOs conducted by the Ethics Resource Center (ERC), the Society of Corporate Compliance and Ethics (SCCE) and the Ethics & Compliance Officer Association (ECO). The survey asked practitioners in the E&C field: "What is your primary method for obtaining information about DOJ enforcement actions?"

²Association and trade group reports and newsletters.

³Other companies.



Familiarity with Enforcement

A Substantial Majority of Ethics & Compliance Leaders (Respondents) Are Familiar with DOJ Enforcement Priorities and Actions.

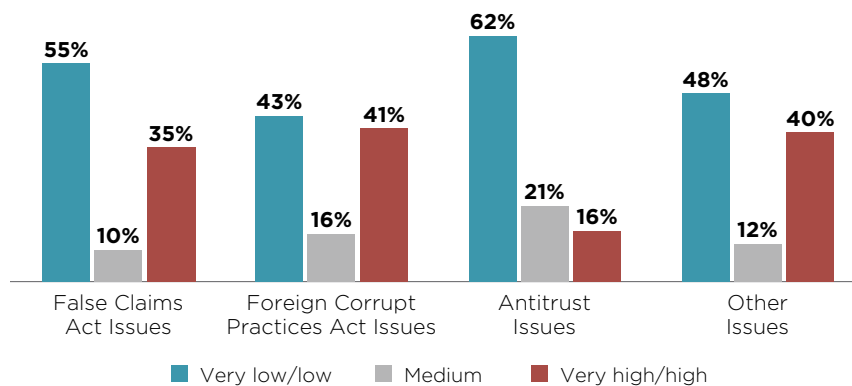
82% of respondents are familiar with DOJ's enforcement priorities.

81% of respondents are familiar with DOJ's enforcement actions in the previous two years.

Perceived Level of Compliance Risk

Majorities or Pluralities of Organizations Assess Their Risk from the Several Areas of Focus As Low or Very Low.

Level of Compliance Risk from Areas of Focus



Organizations at a higher risk in any of these areas are more likely to:

- Brief the board and other groups in their organization on the resource.
- Reference the respective resource in documents, briefings, meetings, etc.
- Reference the resource to reinforce the importance of building an ethical culture within the organization.

Reforms That Would Incentivize Improved Compliance Programs

Respondents overwhelmingly agree that the following reforms demonstrative of a cooperative rather than a punitive approach by DOJ would incentivize improved corporate compliance programs in organizations.

96% Increasing the credit given to companies for establishing and continuously building a strong ethics culture.

95% Providing credit to companies with an effective compliance program that acted without intent to unreasonably delay reporting in cases where a whistleblower reported to governmental authorities before the company reported.

92% Providing specific information about the degree that various factors are used to determine credits given to companies, reductions in penalties or decisions not to prosecute.

83% Elimination of the threat of exclusion or debarment for companies that have implemented an effective compliance program.

84% Dismissal of a qui tam action if the company maintains an effective compliance program (one that meets DOJ criteria) in a situation where the employee of the company failed to report the alleged misconduct internally before filing the qui tam suit.

Respondent Suggestions: Actions (and Examples) DOJ Could Take to Increase Organizations' Attention to Their Compliance Program

• **Publicize enforcement information.**

- Share instances of giving credit for effective programs.
- Share information about decision-making and factors used in making determinations.
- Demonstrate unbiased, apolitical quality and consistency in investigations and decision-making.

• **Continue improving documents.**

- Present examples.
- Coordinate documents with one another and across regulatory agencies.

• **Increase efforts to engage senior business leaders in organizations.**

- Develop communication addressed to senior business leaders.
- Provide guidance to senior leaders on ways to engage with and strengthen programs.

• **Increase engagement with companies.**

- Provide training (e.g., regional learning events).
- Engage with CECOs earlier in investigations.

• **Increase communications around enforcement.**

- Increase use of social media.
- Provide guidance on an option to report on programs in public filings.

• **Provide more guidance around employee responsibilities, activities and relationships.**

- Emphasize the holistic, culture-building quality of these efforts versus just satisfying legal standards.
- Reinforce the importance of CECO autonomy and reporting directly to the board.



Conclusions

The Department of Justice Guidelines and Resources Influence Organizational Conduct

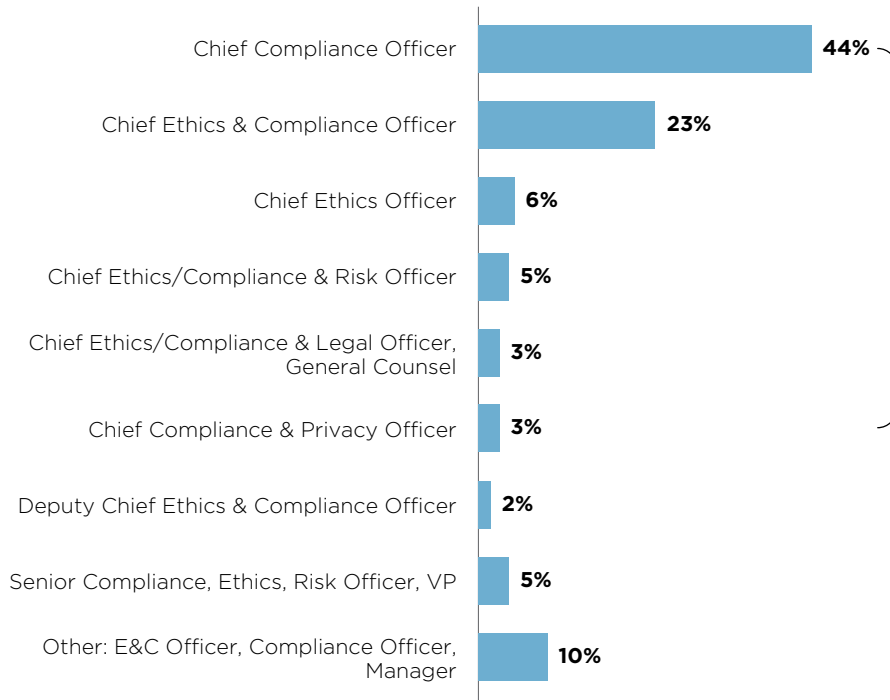
- 1. Organizations evaluate their need to respond to the resources based on multiple factors, for example: the helpfulness of the resources, the materiality of the resources, the perceived strength of their compliance program, the existing awareness of the content of the resources by employees in the organization, the organization's industry, the breadth of the organization's operations, the level of risk presented by the regulatory focus (e.g., FCA matters).**
 - Efforts by DOJ to assure organizations of the value of following or adhering to the guidance in the resources will translate into increased referencing of the resources in organizations through briefings and in other settings.
 - Providing metrics and suggestions on methods of measurement could help organizations evaluate their success in building an effective program and complying with guidelines.
 - Clear guidelines using illustrative examples could help organizations establish minimum programs.
 - Emphasizing the importance of ethical culture encourages organizations to pursue additional means to integrate ethical behavior into business operations.
- 2. Awareness of DOJ declining prosecution and/or negotiating plea agreements is low. Awareness of DOJ consistently awarding credit for self-disclosure, cooperation and remediation is low.**
 - Providing evidence that DOJ uses the resources when evaluating programs, making determinations and awarding credit translates into greater use of the resources by organizations, and will translate into a greater likelihood that organizations will build effective programs and self-disclose, cooperate and remediate violations.
- 3. Organizations operate under multiple regulatory regimes.**
 - Increasing the consistency between DOJ resources could help organizations more easily develop effective programs and strong ethical cultures.
 - Increased coordination of intentions with other regulatory regimes or guidelines could help organizations create greater internal consistency in their program.
- 4. Many organizations are looking for DOJ to be more proactive in working with them and to provide more information about enforcement. Most organizations obtain information about enforcement actions primarily from associations, trade groups and leading experts (non-DOJ sources).**
 - Taking a more cooperative approach in support and enforcement as evidenced through written communications, policies and decisions could translate into stronger compliance programs, fewer violations and greater cooperation when violations occur.
 - DOJ could consider its position vis-à-vis these groups and potentially strengthen working relationships with these groups that can act to publicize information about DOJ activities.



Organization Demographics

The survey included responses from 248 chief ethics & compliance officers (CECOs), chief compliance officers (CCOs) and chief ethics officers (CEOs) or their equivalents from different organizations.

Participant Characteristics: Role

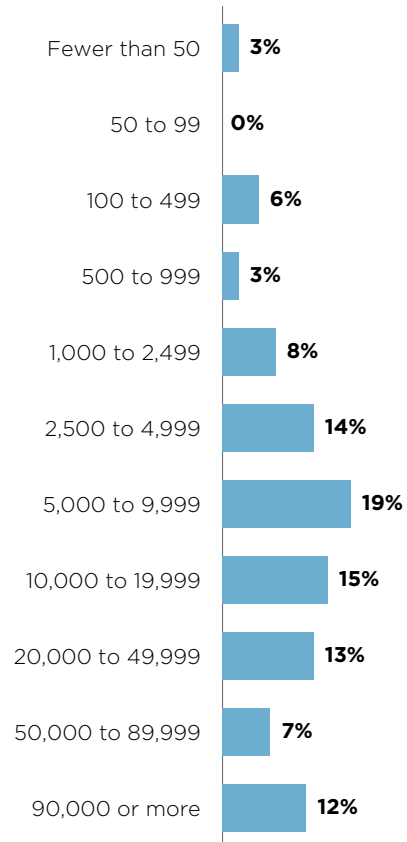


83% of participants lead the ethics, compliance or E&C function



Organization Demographics

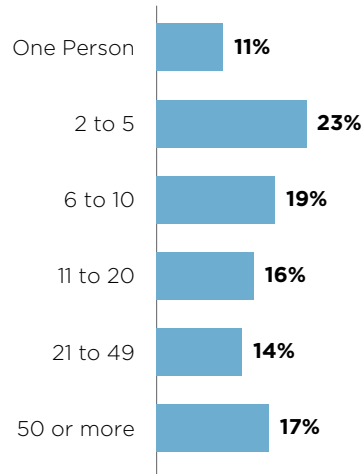
Organization Size by Number of Employees



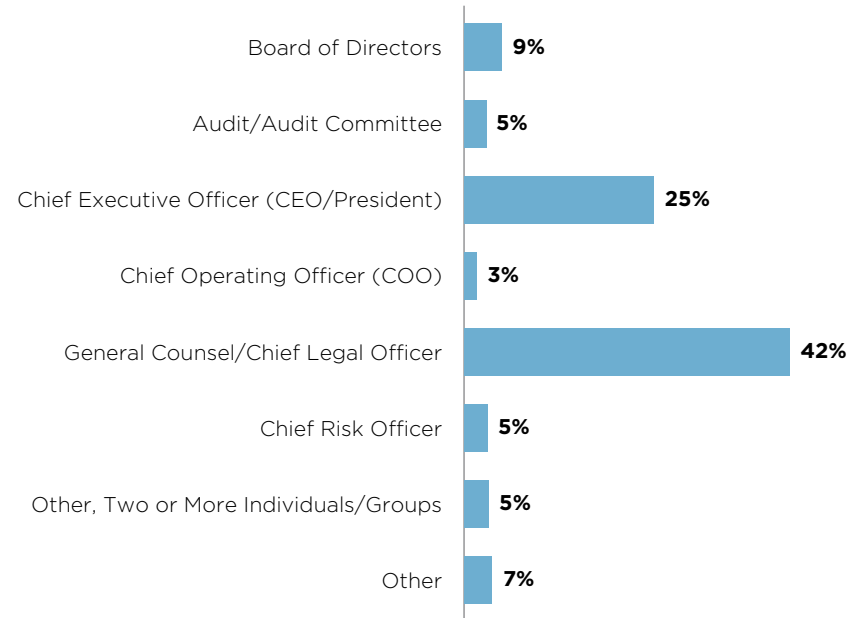
	OPERATIONS IN:	
	One Country	More than One Country
Overall	32%	68%
Fewer than 50 employees	80%	20%
50 to 99 employees	n/a	n/a
100 to 499 employees	63%	37%
500 to 999 employees	20%	80%
1,000 to 2,499 employees	33%	67%
2,500 to 4,999 employees	30%	70%
5,000 to 9,999 employees	44%	56%
10,000 to 19,999 employees	36%	64%
20,000 to 49,999 employees	22%	78%
50,000 to 89,999 employees	10%	90%
90,000 or more employees	6%	94%

Organization Demographics

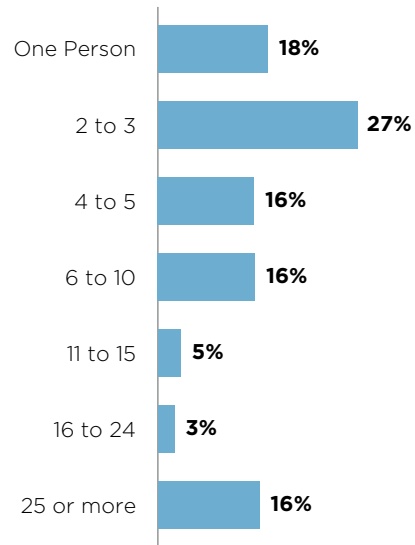
Number of Full-Time (and FT Equivalent) E&C Employees



Chief Ethics & Compliance Officer (or Equivalent) Reports to:



Number of Full-Time (and FT Equivalent) Risk Function Employees



Organization Demographics

Primary Industry

Accommodation and Food Services	1%
Aerospace and Defense	4%
Agriculture, Forestry, Fishing, Hunting	2%
Arts, Entertainment and Recreation	1%
Automotive	1%
Construction	2%
Education: Primary, Secondary, Community College	1%
Education: College, University, Professional School	1%
Finance and Banking	7%
Government: State	1%
Government: Federal/National	3%
Insurance	5%
Manufacturing	1%
Medical: Health Care	14%
Medical: Pharmaceuticals	4%
Medical: Other (Research, Biotech., Equipment, etc.)	7%
Mining: Oil, Coal, Other Materials, Ores	2%
Nonprofit (Other type not listed)	2%
Professional, Scientific and Technical Services	3%
Real Estate (Commercial/Residential), Leasing	3%
Retail Trade	5%
Services: Personal, Repairs, Civic/Prof./Social/Religious/etc.	1%
Technology (InfoTech, Info Systems, Tech Firms, Telecomm.)	9%
Transportation, Warehousing, Waste Management	2%
Utilities: Electric, Gas, Water	5%
Other	10%

Corporate Compliance Programs and U.S. Department of Justice Enforcement Policies

► SUMMARY FINDINGS

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