

# Olson & Associates

November 6, 2012

Office of Public Affairs  
U.S. Sentencing Commission  
One Columbus Circle NE, Suite 2-500  
Washington DC 20002-8002

Dear Sir/Madame:

We are contacting you in order to propose a revision to Ch. 8 of the Federal Sentencing Guidelines for Organizations, namely, an expanded definition of the term "effectiveness." This proposal is borne out of our nearly 35 collective years of professional experience working in ethics and compliance (E&C), both as in-house E&C officers and external consultants to Fortune 500 companies. It also results from a growing frustration on the part of these companies and their regulators that witness, notwithstanding the 2012 amendments to the guidelines, organizational risks that repeat from year-to-year and recurrent ethical and legal violations, recently precipitating the so-called Great Recession.

## **Proposed Revision**

Our proposed revision is to expand the definition of "effectiveness" to include requirements for 1) objectively testing changes that result from the application of mitigation strategies and 2) relating these changes to the company's business objectives for the E&C program (probably around reducing ethical and legal exposure, as well as enhancing reputation).

Prevailing interpretations of the chapter's discussion of "effectiveness" seem to support the notion that "checking the box" is sufficient to demonstrate a program's "effectiveness." These check-the-box measures generally include identification of target groups, counts of activities directed towards them, and frequency of each of these metrics. Common examples are number of investigations in a quarter (with mean times to close), number of helpline calls received in a year (with percentage of

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allegations substantiated), and number and type of employees trained (by types of training). These are what we will call *process* measures; they are useful inasmuch as they show that the program has been active, but they fail to answer the incisive question: “So what?” That is, these counts do not capture the *impact* of the activities.

The expanded definition of “effectiveness” would remedy the insufficiency of process measures by addressing the *impact* of the process on the various target groups in an organization. This revision would make it clear that “effectiveness” also means objectively tested (not just self-reported) changes in awareness, knowledge, attitudes, values, and/or behaviors. This testing can be as simple as pre- and post-testing the target group being trained. With a bit more effort, the target group could be tracked and follow-up tested at six months. Of course, there are numerous other research methods that an organization could use, depending on available resources.

This expansion we propose to the definition of “effectiveness” in the guidelines also involves an *outcome* metric in addition to the process and impact ones. This outcome metric would relate the E&C program impacts to the business objectives of the company. As a result, it could potentially answer the “So what?” question introduced in an earlier paragraph, by demonstrating not only the E&C program’s value-added according to its own objectives, but also its value-added to the company as a whole.

## Justification

- Offers a potential solution to recidivism of corporate malfeasance.
- Responds to growing concerns of professional associations about the effectiveness of E&C programs.
- Helps prevent ethical and legal exposure by managing the root-causes of risk—and not just treat these risks after they have occurred.
- Aligned with educational standards of pedagogy based on academic theory and research.
- Consistent with accepted local, state, and standards for public education at the local, state, and national levels.
- Reflects recent advances in behavioral research.
- Overcomes the methodological insufficiencies of so-called ethics rating schemes of national and international companies. In addition, it underscores the

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importance of benchmarking only against practices in other companies that have validated the effectiveness of their practices using research methods like the ones in this proposal. A practice is *not* a “best practice” unless it meets these methodological requirements.

- Understands that “evaluation” is not simply re-assessment. Rather, it makes methodological sense only in a broader program planning and evaluation framework. In other words, an E&C program develops baselines for its mitigation strategies from a root-cause analysis (one that identifies the underlying factors that drive risk [see “impact” above]) from its risk assessment process; establishes objectives for changing those risk factors; selects validated strategies to mitigate them; and evaluates whether or not the mitigation strategies achieved their objectives. By conducting evaluation in this way, a program can potentially attribute change to *their* interventions, determine the cost-effectiveness of their mitigation strategies, and demonstrate with some confidence what they have done (and, as important, what they cannot do by themselves).
- Provides E&C programs with more powerful, finely calibrated mitigation strategies, as well as science-based methods for evaluating their processes, impacts, and outcomes—their “effectiveness.”

If you need additional information, please call us at +1 617 620 7829 or [bob@olson-associates.com](mailto:bob@olson-associates.com).

Regards,

*Bob*

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Principal