

SWAFFORD LAW, LLC

LAW YOU CAN USE.
A LAWYER THAT LISTENS.

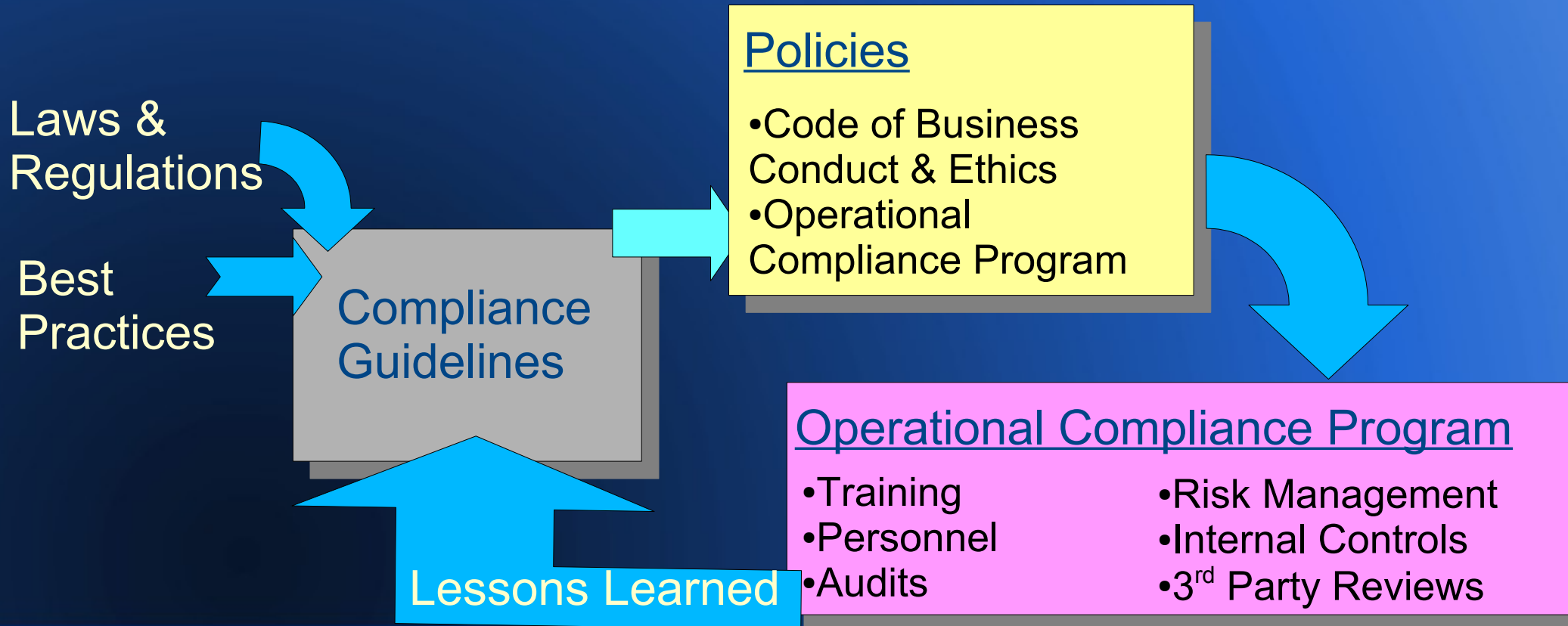


41 State Circle, Annapolis, MD 21401 Tel: (202) 670-8677 Fax (240) 243-2273

Notional Compliance Program for a U.S. Federal Contractor Operating in Afghanistan



Overview: Compliance Architecture





Compliance Guidelines: Laws & Regulations

General US Laws That Pose Heightened Risks to Companies Operating Overseas:

- Antitrust
- GAAP Accounting
- OFAC Specially Designated Nationals
- Export Controls (e.g., Deemed Exports)
- Trade Compliance Regimes (e.g., CTPAT)
- Trading with the Enemy Act
- FCPA
- Commerce & Treasury Boycotts



Compliance Guidelines: Laws & Regulations

US Federal Contractor Laws & Guidelines:

- Truth in Negotiations Act TINA
- False Claims Act FCA
- Procurement Integrity Act PIA
- Federal Acquisition Regulations FAR
- Executive Orders
- Contract-Specific or DCAA Accounting (e.g., Cost Realism, G&A)



Compliance Guidelines: Laws & Regulations

International Laws:

- UK Anti-Bribery Act (Depending on structure of company and its operations)
- European Privacy Regimes (if European citizens implicated)
- Afghanistan Business Licensing



Policies: Code of Business Ethics & Compliance

Code Highlights:

- Centralized Repository of Individual Policies ensuring compliance
- Required (Federal Contracts above certain threshold)
- Approved by Board
- Best Practice Organized Topically (e.g., “Foreign Officials”) rather than by laws or regulations
- Includes Mandatory Disclosure Requirements (e.g., FCA or suspension/debarment)
- Includes or References Implementing Operational Compliance Program



Operational Compliance Program: Essential Elements

Operational Compliance Program:

- Approval, Dissemination & Management of Code & Policies
- Training Program (overall; targeted individuals; targeted topics)
- Other Visibility / Awareness Measures (e.g., hotlines, posters, etc)
- Risk Management Process (Identification, Controls to Mitigate, Testing of Controls, Reporting & Documenting)
- Internal and 3rd Party Auditing
- Must Operationalize Sanctions for internal non-Compliance
- Internal Investigation Management
- External Investigation Management



Notional Corporate Compliance Program: Next Steps

Verify Assumptions:

- Location: Afghanistan?
- US Federal Contractor & prime or sub?
- Status: subsidiary, joint venture, or foreign operating entity?
- Interrelationship with other legal entities?



Notional Corporate Compliance Program: Next Steps

Detail Documents:

- Overall Code of Business Ethics and Compliance and any supporting policy documents are easily adaptable, and templates exist.
 - Sample FCPA highlights already downloaded and easier to adapt
- Operational Compliance Program must be more tailored to details of operating entity, with specific controls in place based upon risk management process
 - Multiple best practices exist for evaluation (e.g., designing controls at accounting level to based upon triggers for foreign officials, etc.)