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# FCPA Guidance Takeaways for the Chief Compliance Officer

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Chief compliance officers who were eagerly awaiting the joint release of this week's "A Resource Guide to the U.S. Foreign Corrupt Practices Act" from the U.S. Department of Justice and the Securities and Exchange Commission should not be disappointed. Although the guidance breaks little new ground, CCOs with robust compliance programs will likely find their companies' efforts validated by its 120 pages of detailed clarifications and discussion of numerous hypothetical situations. The document should also aid CCOs in educating their boards and senior management on the difference between a meaningful, well-implemented, well-resourced program and mere window-dressing.

But what's particularly useful for CCOs is the continuation of strong messaging on the need for CCO independence, empowerment, and resources. In its description of the "hallmarks" of effective compliance programs, the guide tracks the language of the 2010 OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance, which noted that the CCO must have "adequate autonomy from management" in order to do the job. Justice has been using this language in individual FCPA settlement agreements since 2010, going beyond the letter of the current Federal Sentencing Guidelines for Organizations.

The guidance also echoes recent public remarks from senior SEC officials warning boards and management that their support for the CCO role is now under the microscope. In an October address to a Society of Corporate Compliance and Ethics gathering of more than 1,000 compliance professionals, Stephen Cohen, associate director of the SEC Division of Enforcement, stated that "it sends a strong message that compliance and ethics are important if a company includes an independent CECO in the C-suite" and encouraged boards to provide CCOs with "the necessary resources, independence, standing, and authority to be effective."

The new FCPA guidance reinforces what CCOs have long been saying: that all the bells and whistles of a compliance program are meaningless without strong leadership and oversight from an experienced CCO who is empowered to make difficult and often unpopular decisions, and keep the board informed via a direct, unfiltered reporting relationship.

What better reminder of this principle than this year's massive Wal-Mart Mexican bribery scandal, and now the decision to expand its investigation into Brazil, China, and India? Evidently, Wal-Mart had in place a compliance program, but it was no match for the decision by a small group of top officials, including the company's CEO and general counsel, to simply bury the investigation, and the board remained in the dark. It's difficult to imagine that happening in a company with a strong, independent CCO who has direct, unfiltered access to the board. As validated by the FCPA guide, that alone should be a reason for companies serious about compliance to re-examine the positioning and mandate of their CCOs—and by extension, their overall

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compliance and ethics programs.

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See also: "[DOJ and SEC's New FCPA Guidance Provides a Desktop Compliance Reference for Companies](#)," *CorpCounsel*, November 2012.

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