

# [Government regulation of corporate business assignment](https://assignbuster.com/government-regulation-of-corporate-business-assignment/)

Does the government need to be involved and regulate the field? Is there a need for additional regulation? Is there a need for less regulation? Understanding the fraud theory is paramount to preventing and detecting the crime. Donald R. Creases (1919-1987) developed the concept “ the triangle fraud”. The first leg of the triangle represents a perceived non- shareable financial need (pressure), the second leg represents perceived opportunity and the third leg stands for rationalization. (Wells, J. Principals of fraud examination, rd edition, John Wiley & Sons, Inc. 2011). The unseasonable Flanagan problem or pressure creates the motive for the crime to be committed. Financial pressure arises from situations that fell into six basic categories: \* Violation of ascribed obligations \* Problems resulting from personal failure Business reversals \* Physical Isolation \* Status gaining \* Employer-employee relations The person must also perceive that he has an opportunity to commit the crime without being caught. In Secrecy’s view, there were two components of the perceived opportunity: general information and technical skill.

The third and final factor in the ‘ OFF the crime that has already occurred. It is a necessary step of the crime before it takes place so that the perpetrator can make his illegal behavior intelligible to himself. The key to understand Crossers theory is to remember that all three elements must be present for a trust violation to occur. Ones the fraud elements were discussed it is logical to talk about how to prevent the fraud. Albrecht and David in the article “ Top 10 reasons why fraud in increasing in the U. S. ” conclude that “ the companies must adopt practices to prevent, detect and investigate fraud.

Furthermore the authors of the article say that effective fraud prevention policies begin with the government efforts and actions. Only government has power to set standards and laws for everybody to obey, and then the companies establish their preventive policies on that base. Also we need to look at the other side of the government regulation in a free- market economy. Khakis O. In his article “ Accounting regulation, financial development, and economic growth” examines growth of market economies and questions if government regulation is preferred for the market economy or the market should be regulated by itself.

The author provides evidence that “ accounting regulation has a strong effect on economic growth even after controlling for a number of macroeconomic and socioeconomic variables”. There are three major pieces of government regulation: The Securities Acts of 1933 and 1934, the Foreign Corrupt Practices of 1977, and the Serbians Solely Act. The Securities Act of 1933 The Act was enacted after the market crashed in 1929. It was the first major piece of federal legislation to apply to the sale of securities.

The purpose of the act is to provide potential investors with sufficient information about the securities and the sure and to prohibit misrepresentation in the sale of securities. Prior to 1933, regulation of securities was governed by the state law. The 1933 Act requires that, before offering or selling securities in a public offering, the issuer must register the securities with the Securities and Exchange Commission. The registration however does not guarantee the quality of the stock, but means that on the surface the company has provided all required information about itself and its major product. Beauty Samuelsson, Introduction to Business Law, South-Western Coinage Learning, 2008 p. 413) The Securities Acts of 1934 The Act established the Securities and Exchange Commission and gives the SEC power to police the sale of securities in the U. S. Powers held by the SEC include the authority to register, regulate, and oversee brokerage firms, transfer agents and clearing agencies. The Act prohibits fraudulent insider trading, which is illegal if a person trades a security while in possession of material nonpublic information and breaches the fiduciary duty.

It also governs the disclosure in proxy materials and covers the corporate reporting requirements and registration rules of market artisans. (Hanna, J. (2009). The Securities Exchange Act of 1934. California Law government regulation of securities, helped to prevent future possible scandals in this area. Foreign Corrupt Practice Act of 1977 (APPC) The act prohibits bribery of foreign officials by American business. Major provisions of the Act are: prohibitions on activities, reporting requirements and facilitating payments. Prohibitions.

The Act prohibits U. S. Companies from “ corruptly’ offering, paying, and promising the payment of money to any foreign official and political party’s candidates. Penalties include fines up to $2 million and prison terms of up to five years. Reporting requirements. APPC requires to report to investors and the SEC all expenditures of the prohibitions listed above. Companies also must have policies to comply the transactions with management’s directions and the transactions must be recorded in accordance with accepted accounting procedures.

There are no criminal penalties unless the violation was knowing or willing. Facilitating payments or “ Grease. In some developing countries officials demand small payments in the form of gifts, tips or fees. Under the APPC these payments were originally illegal but Congress slightly loosened the standards and now permits such actions, so long as the payments were not made for the purpose of influencing the decision. The critics of the Act complained that U. S. Business was placed at a competitive disadvantage since foreign businesses did not participate in the Act.

But in 1999 the international business adopted the Convention on Combating Bribery of Foreign Public Officials and the act has become a model for developing business world. (Barker, K. , & Pacing, C. , & Season, Dave. (2012). The Foreign Corrupt Practices Act: a law worth revisiting. ). The APPC was enacted after a complex of scandals known as Watergate. Watergate is a building in Washington D. C. Where the Democratic National Committee had their headquarters. The Watergate Scandal was exposed during the period of President Nixon.

In 1972, five men broke into Watergate building and the incident was ordered. Investigators learned of hidden funds and substantial bribes to foreign officials to obtain different advantages. Moreover, different other crimes such as political espionage and corruption were exposed and President Nixon finally signed. The Serbians-Solely Act The act was signed in 2002 to address corporate governance and accountability as well as public accounting responsibilities in improving the quality, reliability, integrity, and transparency of financial reports.

Fraudulent accounting interpretations was used by corporate management of Enron, World, Arthur Anderson and caused millions of dollars in losses to investors and broke the public trust. Fusers P. And Ross M. At the book “ What went wrong at Enron” summarize describe in details schemes used by Enron: 1. Minority interest transactions, using alluding block. Enron borrowed money, but on the financial statements they are not shown as a debt but as a minority interest in a Joint venture.

The purpose of the The owner of the assets estimates the value of future cash flow, sells the assets to investors at a discount and pockets the money from the sale. The “ characterization” became a term of the art at Enron. 3. Special purpose entities. The purpose is to use of so-called special purpose entities, which were set up to purchase the assets being securities. The original idea behind SPEW was to isolate risk by setting up an independent entity that owned Just one asset – say, credit card receivables. The investors of the entity would reap the gain, but they would also have to accept the risk of something going wrong.

The accounting rules for SPEW in asses and in early asses stated that as long ass% of the capital in the SPEW came from an independent resource and was truly at risks – the SPEW qualified as independent. In other word, even if 97% of the capital of debt raised by the company selling the assets, the company didn’t have to include that debt on its balance sheet. In fact, most of Enron’s SPEW were rarely independent. Enron guaranteed that it will take care of the lenders. The court examiner concluded that Enron’s liquidity was the result of loans for which Enron retained the ultimate liability.

He also contends that Enron did not properly disclose the liability to investors. 4. Prepay. Enron would agree to deliver natural gas or oil over a period of time to an independent offshore entity that was set up by one of its lender. The entity would pay Enron up front with money it had obtained from the lender. The lender agreed to deliver the same commodity to Enron, Enron would pay a fixed price for those deliveries over a period of time. In reality: Enron has a promise to pay a lender a fixed return on money it had received.

Enron listed prepays not as a debt but a trading liability. How Enron would pay off these loans? In theory, the company would use future cash flows from outstanding trades. Instead, Enron used fresh prepays to replace earlier ones. In 1999, Enron’s cash flow from operations would have been negative without prepays. Chase Manhattan, Citreous and accountants of Arthur Andersen participated in Enron’s prepay transactions. They all were making money with Enron. It is not Just accounting games made Enron’s house of card” go to a bankruptcy in 24 days.

Jeff Killings aggressive ideas (president and CEO), gambling of Louis Forget (CEO of Enron Oil), unethical behavior in Californians market diverted company to an end. Jeff Killing never admitted his guilt. “ There was a liquidity problem, and people got scared. That is what caused the problem”, he said. He believes that they killed a great company. Although financial machinations were complicated, some were complied with GAP. Enron’s downfall made the accounting experts revise GAP, and Serbians-Solely act came into force in 2002 as a result of Enron’s bankruptcy.

The Serbians-Solely Act provides sweeping measures aimed at: \* Establishing higher standards for corporate governance and accountability Creating an independent regulatory framework for the accounting profession \* Enhancing the quality and transparency of financial reports \* Developing severe civil and criminal penalties for corporate wrongdoers \* Establishing new protections for corporate weightlessness The Act authorized the Securities and Exchange Commission (SEC) to issue implementation rules on many of its provisions intended to improve corporate governance, financial reporting, and audit functions.

These implementation rules are expected to create an environment that promotes corporate misstatements, and restores public trust in the quality and transparency of financial information. Conclusion: In recent years we see that government regulation is a hot issue of the day. The Dodd-Frank Wall Street Reform and Consumer Protection Act were signed by President Barack Obama in 2010 as a response to asses recession. The Act brought the significant changes in financial regulation in U. S. : creates new agencies, imposes additional requirements for companies listed on U.

S. Stock exchanges, changes rocker discretionary voting, impacts capital raising in U. S. , extends the extraterritorial jurisdiction of certain provisions of the federal securities laws and amends the proxy statement rule. As corporate business develops, the more frequent new scandals and fraud appear. The fraud also gets trickier and more complex. Globalization and cybercaf?? make it even faster to commit and more difficult to detect. That’s why we need more regulations and the government should.