§8B2.1. Effective Compliance and Ethics Program

(a) To have an effective compliance and ethics program ... an organization shall—

(1) exercise due diligence to prevent and detect criminal conduct; and

(2) otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law. Such compliance and ethics program shall be reasonably designed, implemented, and enforced so that the program is generally effective in...
preventing and detecting criminal conduct. The failure to prevent or
detect the instant offense does not necessarily mean that the program is
not generally effective in preventing and detecting criminal conduct.

(b) Due diligence and the promotion of an organizational culture that
courages ethical conduct and a commitment to compliance with the law
within the meaning of subsection (a) minimally require the following:

(1) The organization shall establish standards and procedures to prevent
and detect criminal conduct.

(2)\(^2\)

(A) The organization’s governing authority shall be knowledgeable
about the content and operation of the compliance and ethics
program and shall exercise reasonable oversight with respect to
the implementation and effectiveness of the compliance and
ethics program.

(B) High-level personnel of the organization shall ensure that the
organization has an effective compliance and ethics program, as
described in this guideline. Specific individual(s) within high-
level personnel shall be assigned overall responsibility for the
compliance and ethics program.

(C) Specific individual(s) within the organization shall be
delegated day-to-day operational responsibility for the compliance
and ethics program. Individual(s) with operational responsibility
shall report periodically to high-level personnel and, as
appropriate, to the governing authority, or an appropriate
subgroup of the governing authority, on the effectiveness of the
compliance and ethics program. To carry out such operational
responsibility, such individual(s) shall be given adequate
resources, appropriate authority, and direct access to the
governing authority or an appropriate subgroup of the governing
authority.

(3) The organization shall use reasonable efforts not to include within
the substantial authority personnel of the organization any individual
whom the organization knew, or should have known through the

\(^2\) Application of Subsection (b)(2).—High-level personnel and substantial authority personnel of
the organization shall be knowledgeable about the content and operation of the compliance and
ethics program, shall perform their assigned duties consistent with the exercise of due
diligence, and shall promote an organizational culture that encourages ethical conduct and a
commitment to compliance with the law. If the specific individual(s) assigned overall
responsibility for the compliance and ethics program does not have day-to-day operational
responsibility for the program, then the individual(s) with day-to-day operational responsibility
for the program typically should, no less than annually, give the governing authority or an
appropriate subgroup thereof information on the implementation and effectiveness of the
compliance and ethics program.
exercise of due diligence, has engaged in illegal activities or other conduct inconsistent with an effective compliance and ethics program.³

(4)

(A) The organization shall take reasonable steps to communicate periodically and in a practical manner its standards and procedures, and other aspects of the compliance and ethics program, to the individuals referred to in subdivision (B) by conducting effective training programs and otherwise disseminating information appropriate to such individuals’ respective roles and responsibilities.

(B) The individuals referred to in subdivision (A) are the members of the governing authority, high-level personnel, substantial authority personnel, the organization’s employees, and, as appropriate, the organization’s agents.

(5) The organization shall take reasonable steps—

(A) to ensure that the organization’s compliance and ethics program is followed, including monitoring and auditing to detect criminal conduct;

(B) to evaluate periodically the effectiveness of the organization’s compliance and ethics program; and

(C) to have and publicize a system, which may include mechanisms that allow for anonymity or confidentiality, whereby the organization’s employees and agents may report or seek guidance regarding potential or actual criminal conduct without fear of retaliation.

(6) The organization’s compliance and ethics program shall be promoted and enforced consistently throughout the organization through⁴

(A) appropriate incentives to perform in accordance with the compliance and ethics program; and

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³ Application of Subsection (b)(3).—

(A) Consistency with Other Law.—Nothing in subsection (b)(3) is intended to require conduct inconsistent with any Federal, State, or local law, including any law governing employment or hiring practices.

(B) Implementation.—In implementing subsection (b)(3), the organization shall hire and promote individuals so as to ensure that all individuals within the high-level personnel and substantial authority personnel of the organization will perform their assigned duties in a manner consistent with the exercise of due diligence and the promotion of an organizational culture that encourages ethical conduct and a commitment to compliance with the law...

⁴ Application of Subsection (b)(6).—Adequate discipline of individuals responsible for an offense is a necessary component of enforcement; however, the form of discipline that will be appropriate will be case specific.
(B) appropriate disciplinary measures for engaging in criminal conduct and for failing to take reasonable steps to prevent or detect criminal conduct.

(7) After criminal conduct has been detected, the organization shall take reasonable steps to respond appropriately to the criminal conduct and to prevent further similar criminal conduct, including making any necessary modifications to the organization’s compliance and ethics program.

(c) In implementing subsection (b), the organization shall periodically assess the risk of criminal conduct and shall take appropriate steps to design, implement, or modify each requirement set forth in subsection (b) to reduce the risk of criminal conduct identified through this process.5

Definitions.

“Compliance and ethics program” means a program designed to prevent and detect criminal conduct.

“Governing authority” means the (A) the Board of Directors; or (B) if the organization does not have a Board of Directors, the highest-level governing body of the organization.

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“Standards and procedures” means standards of conduct and internal controls that are reasonably capable of reducing the likelihood of criminal conduct.

[“Substantial authority personnel” means individuals who within the scope of their authority exercise a substantial measure of discretion in acting on behalf of an organization. The term includes high-level personnel of the organization, individuals who exercise substantial supervisory authority (e.g., a plant manager, a sales manager), and any other individuals who, although not a part of an organization’s management, nevertheless exercise substantial discretion

5 Application of Subsection (c).—To meet the requirements of subsection (c), an organization shall:
(A) Assess periodically the risk that criminal conduct will occur, including assessing the following:
   (i) The nature and seriousness of such criminal conduct.
   (ii) The likelihood that certain criminal conduct may occur because of the nature of the organization’s business. If, because of the nature of an organization’s business, there is a substantial risk that certain types of criminal conduct may occur, the organization shall take reasonable steps to prevent and detect that type of criminal conduct....
   (iii) The prior history of the organization. The prior history of an organization may indicate types of criminal conduct that it shall take actions to prevent and detect.
(B) Prioritize periodically, as appropriate, the actions taken pursuant to any requirement set forth in subsection (b), in order to focus on preventing and detecting the criminal conduct identified under subdivision (A) of this note as most likely to occur.
(C) Modify, as appropriate, the actions taken pursuant to any requirement set forth in subsection (b) to reduce the risk of criminal conduct identified under subdivision (A) of this note as most likely to occur.
when acting within the scope of their authority (e.g., an individual with authority in an organization to negotiate or set price levels or an individual authorized to negotiate or approve significant contracts). Whether an individual falls within this category must be determined on a case-by-case basis.

Background

This section sets forth the requirements for an effective compliance and ethics program. This section responds to section 805(a)(2)(5) of the Sarbanes-Oxley Act of 2002, Public Law 107–204, which directed the Commission to review and amend, as appropriate, the guidelines and related policy statements to ensure that the guidelines that apply to organizations in this chapter “are sufficient to deter and punish organizational criminal misconduct.” The requirements set forth in this guideline are intended to achieve reasonable prevention and detection of criminal conduct for which the organization would be vicariously liable. The prior diligence of an organization in seeking to prevent and detect criminal conduct has a direct bearing on the appropriate penalties and probation terms for the organization if it is convicted and sentenced for a criminal offense.